Public Utilities FORTNIGHTLY

February 28, 1946

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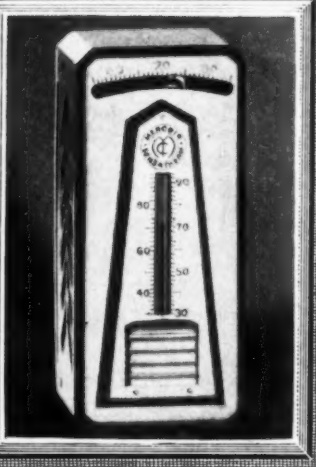
FOR THE HOME

MERCOID SENSATHERM—THE THERMOSTAT OF BEAUTY, MECHANICAL PERFECTION AND IDEAL ROOM COMFORT.



MERCOID

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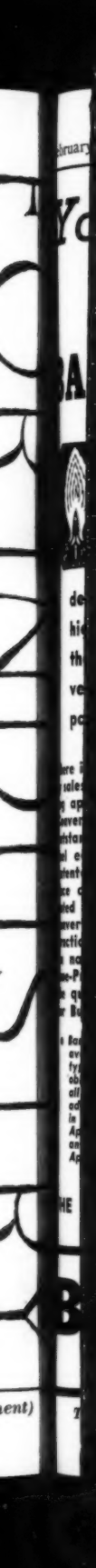
FOR INDUSTRY



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Public Utilities Fortnightly

VOLUME XXXVII *February 28, 1946* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
Publication Office ..... CANDLER BUILDING, BALTIMORE 2, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON 4, D. C.
(Address all communications concerning the FORTNIGHTLY *to Munsey Building, Washington 4, D. C.)*

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1946 by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

EVEN though the world is daily growing more complicated with such things as atomic energy and radar contacts with the moon, there is still a good deal to be said for simple, old-fashioned logic—in making an approach to problems which, on their surface, seem quite insoluble.

A FEW weeks ago the head of a giant electric corporation's transportation department undertook an analysis of the street congestion problem in New York city. His approach was almost disarmingly naïve. He reasoned that there are two ways to correct traffic congestion: (1) We can widen streets and make new streets to such an extent that everybody will be able to drive his own automobile; (2) we can look for the answer in public or mass transit. Subways, streetcars, trolley coaches, and busses, he found, use street space seven times as efficiently as the automobile.

ELISHA FRIEDMAN

OF course, the first alternative is hardly practical in view of the prohibitive expense obviously involved. The cost of making enough street space available in New York city for everyone to drive his own automobile might make the tax burden as expensive as the automobile itself. But we shrink from uncompromising acceptance of the other alternative—a monopoly in favor of mass transportation. It would mean condemning the general use of private passenger automobiles in downtown city areas. It is a drastic step—one which probably no local government, outside of a totalitarian state, would dare to espouse.

* * * *

THE same sort of simple approach and the same political unwillingness to accept logical consequences are seen in our tax problem, so recently high lighted by the Supreme Court decision in the Saratoga Springs Case. Here we witness a growing body of commercial enterprise, operated by Federal, state, and local governments and coöperatives on a tax-exempt (or largely tax-exempt) basis. Such activity, naturally, competes, with unfair success, with privately owned and operated tax-paying enterprise of the same nature. The result is that the tax-producing sphere is shrinking and the tax-consuming or tax-exempt sphere is increasing.

THE simple, logical alternatives of such a situation are: (1) Either we protect private enterprise, as well as public revenues, by placing public operations on an equal tax basis, or (2) we eliminate the inequity by simply eliminating private enterprise and placing all commercial operations on a tax-exempt basis.

As in the case of making enough New York city street space for every automobile, the second alternative mentioned above—eliminating the taxation of all commercial activity by eliminating private enterprise therein—would result in such a tremendous tax burden on remaining taxpayers that it is impractical.

AND yet few men in public office are willing to risk their political fortunes by open espousal of the other alternative—equal taxation for all commercial activities, whether operated by public or private agencies. In the opening article in this issue there is some analysis of the resulting inequities of our government's attempt to compromise somewhere between these two solutions. The situation is made particularly acute now that the so-called "death sentence" of the Holding Company Act is coming into full fruition of its statutory objective.

* * * *

ELISHA FRIEDMAN, author of this article on proposed amendments of the Holding Company Act, is a nationally known consulting economist of New York city whose writings on business problems and economic matters often appear in *The New York Times* and other well-known periodicals. He has been engaged in business administration and scientific management since 1910.

DURING World War I MR. FRIEDMAN was a member of the War Industries Board and the War Finance Corporation. Since 1920 he has appeared often before congressional committees on matters of taxation and finance. Since 1938 he has initiated efforts to revise taxes on capital gains and avoid double taxation of corporate income. He is the chairman of an economic advisory group of European and Canadian officials, bankers, and economists conferring with the U. S. government on matters involving price fixing, labor, taxation, war loans, International Bank, and so forth. He formerly lectured on finance in the New York University School of Commerce.

* * * *

JOHN C. HAMMER, whose brief article on the "Trends in Regulation" begins on page 289, is a member of the Tennessee Railroad and Public Utilities Commission. He makes his home in McMinnville, Tennessee.

JOHN C. HAMMER

* * * *

DANA B. VAN DUSEN, whose 3-part series on "The Nonprofit Subterfuge for Acquiring Public Utilities" is concluded in this issue, is an Omaha attorney whose biographical sketch was carried in more detail in our issue of January 31st.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Michigan commission determined the ownership of funds impounded in a Federal court pending the review of an order of the Federal Power Commission reducing rates for wholesale natural gas service to distributing companies and provide for the distribution of such funds accordingly. (See page 257.)

THE United States Circuit Court of Appeals considered the question of whether premiums must be paid on retirement of bonds pursuant to a requirement of the Holding Company Act. (See page 308.)

THE next number of this magazine will be out March 14th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 61 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

DAVID J. GUY
Manager, U. S. Chamber of Commerce Natural Resources Department.

"According to business standards, the TVA 'yardstick' is 17 inches long."

Excerpt from report of Committee on Postwar Tax Policy.

"Taxation cannot create the spirit of enterprise, but when badly devised and imposed at heavy rates, it can limit or destroy it."

WILLIAM GREEN
President, American Federation of Labor.

"We stand at the threshold of a new industrial revolution, perhaps more sweeping in its effects than the advent of the machine age and electric power."

L. R. CLAUSEN
President, J. I. Case Company.

"The American citizen is almost without the right to make his own contract, which is the right to make a living, until he first subordinates himself to some so-called labor leader."

LACHLAN MACLEAY
President, Mississippi Valley Association.

"It [TVA] is neither a flood-control nor soil conservation agency and does not work with other Federal agencies. It was created primarily to put the government in the power business."

HARRY F. BYRD
U. S. Senator from Virginia.

"There can be no hope for prosperity and industrial peace for America until the equality of rights of all citizens, corporations, and organizations is written into law on the basis of justice for all."

ERIC JOHNSTON
President, United States Chamber of Commerce.

"Arbitration is the civilized way of settling disputes and grievances which may crop out under a collective bargaining contract. Just as we have learned in recent years to accept collective bargaining itself, we can learn to accept arbitration clauses written into the contracts themselves."

A. W. ROBERTSON
Chairman, Westinghouse Electric Company.

"We need to awaken to the fact there is no end to the business organizations or groups of people who can, by the simple act of stopping and preventing others from doing their jobs, hold up the rest of society and extract any penalty they wish. We need to acknowledge duties as well as rights."

EDITORIAL STATEMENT
Montreal Le Jour.

"Politicians and demagogues often confuse two distinct words, wealth and capital. Unproductive wealth is not capital. It becomes capital only from the moment when it is set to work to produce other goods. Wealth that is asleep or is wasted is not capital; it is a social and economic sore. Wealth set aside to produce other wealth is not only a good thing, it is an economic necessity and a social benefit. It is capital."

J. CAMERON THOMSON
Chairman, United States Chamber of Commerce Committee on Economic Policy.

". . . there must be proper balance between control and consent, between regulation and voluntary action. Without regulations and rules we would have chaos and ineffectiveness; without consent and voluntary decisions we would have regimentation and totalitarianism. While the dividing line between these opposing concepts cannot be fixed once and for all, we will retain a free society only if we maximize consent and voluntary decision."

DONALD M. NELSON
Former chairman, War Production Board.

"The government cannot in good faith permit any generation or group of the American people to spend their lives in the valley of an economic curve. While we want to see a maximum of free enterprise and personal initiative in our economy, yet, to avoid human misery caused by prolonged depressions, we must count on the government to make sensible adjustments in the economy to prevent social demoralization and the waste of resources."

ALBERT J. FRANCK
Special accountant, Queens Borough Gas & Electric Company.

"The utility business has less justification than almost any other for illiberality in respect of wages and hours. It is not right invariably to pass on to the ratepayers all the benefits of the efficiencies which labor and management together produce. Utilities are, after all, entitled to their costs and a fair return on investment, and I have never yet, in almost thirty-three years of contact with the utility business, heard of a utility being denounced by a regulatory body for its generosity to the *'common* help.'"

THOMAS E. DEWEY
Governor of New York.

"The power of the written word lies in shaping the mind and spirit of man toward high achievement. There is, of course, a wide gulf between a statement of fact or of principles, on the one hand, and epithets or empty promises on the other. In recent years we have had good reason to learn that difference in our domestic affairs. It is not enough to talk about a more abundant life if the actions that follow the words leave millions unemployed and dependent upon government for a bare existence. It is not enough to talk about economic security and then pursue policies which promote insecurity. It is not enough to talk about the enterprise system and then pursue a course of action that stifles enterprise."

MORE PUBLIC UTILITIES

e switching to Job-Rated trucks

WAS no "wartime secret" that owners of Dodge *Job-Rated* trucks experienced consistent "on-the-" operation. Because their trucks *fit the job*, they formed more efficiently, operated more economi-y, lasted longer.

at's why today so many more public utility com-nies are planning to standardize on precision-lt Dodge *Job-Rated* trucks.

ey're buying trucks with engines rated for their ds. They're getting trucks with a transmission l clutch, with axles, springs and every other unit *-Rated* to handle the job . . . to do a better job, ger, and at low cost!

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THURSDAYS, C. B. S., 9 P. M., E. T.

4

WARTIME YEARS PROVED PLENTY

Two "eye-opening" facts that will long be remembered by men to whom trucks were a "bread and butter" proposition during wartime, are these:

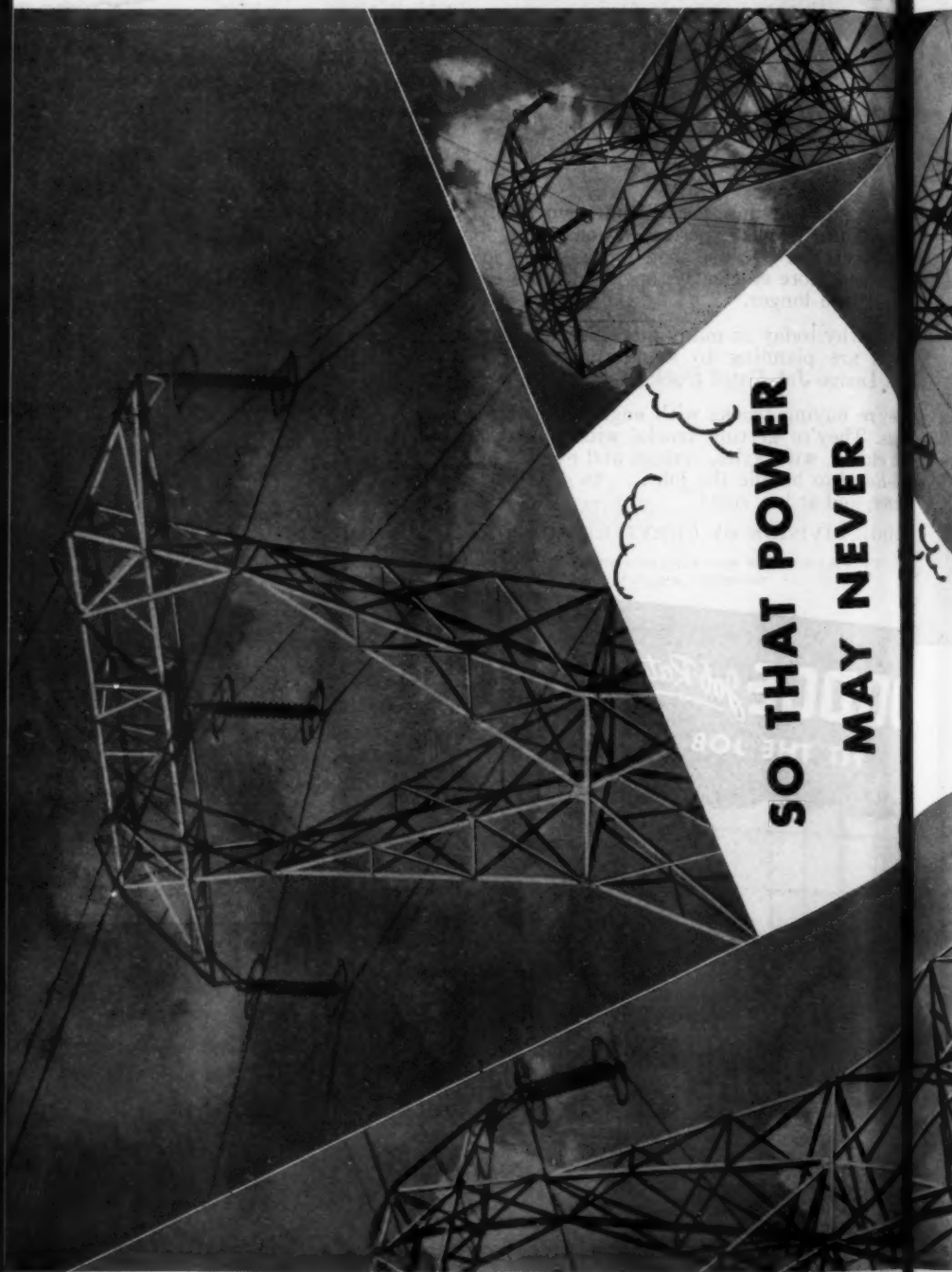
1. There's no substitute for years of truck-building experience, or for precise workmanship and quality . . . major reasons for the economy, dependability and long life of Dodge Job-Rated trucks.

2. Dodge Job-Rated trucks stayed on the job because of the ready availability of Dodge TRUCK PARTS and because of the prompt, efficient truck service of Dodge dealers.

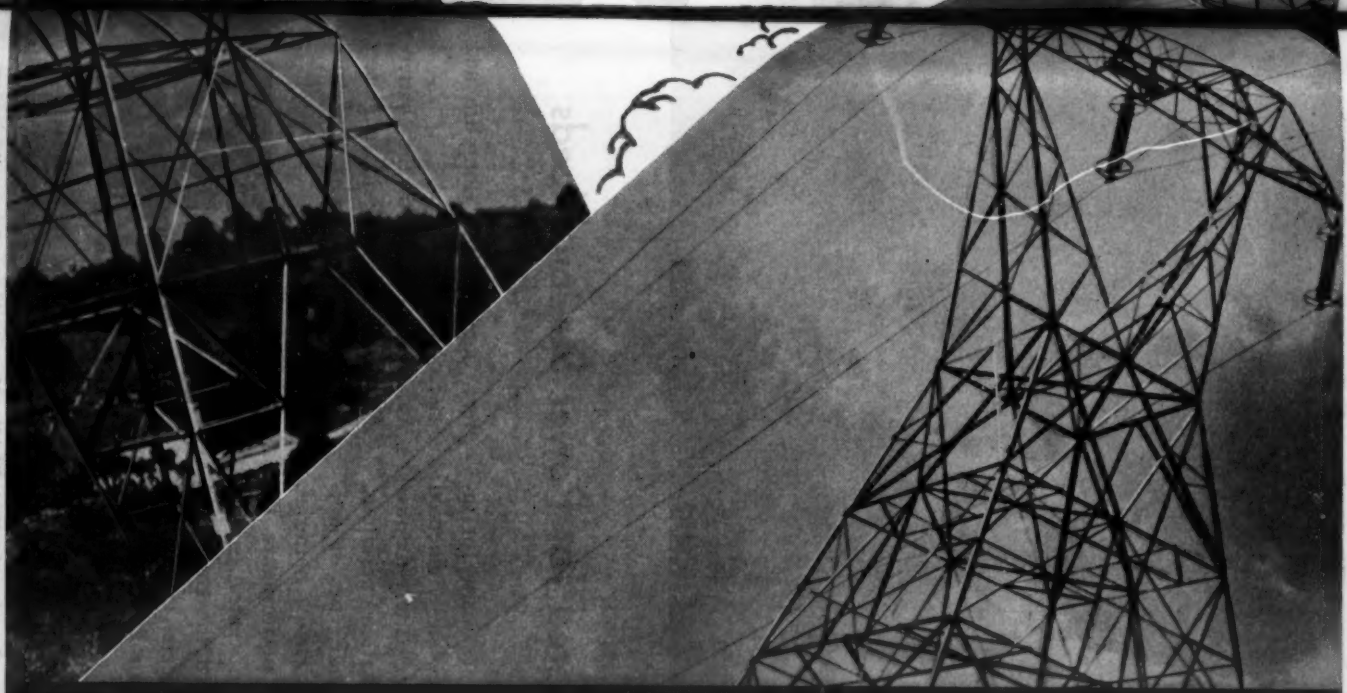
See your Dodge dealer Now! Let him help you choose the right Dodge Job-Rated truck for all your hauling needs!

)ODGE *Job-Rated* TRUCKS

FIT THE JOB ... LAST LONGER



MAY NEVER



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NEW YORK CHICAGO PHILADELPHIA BIRMINGHAM WASHINGTON

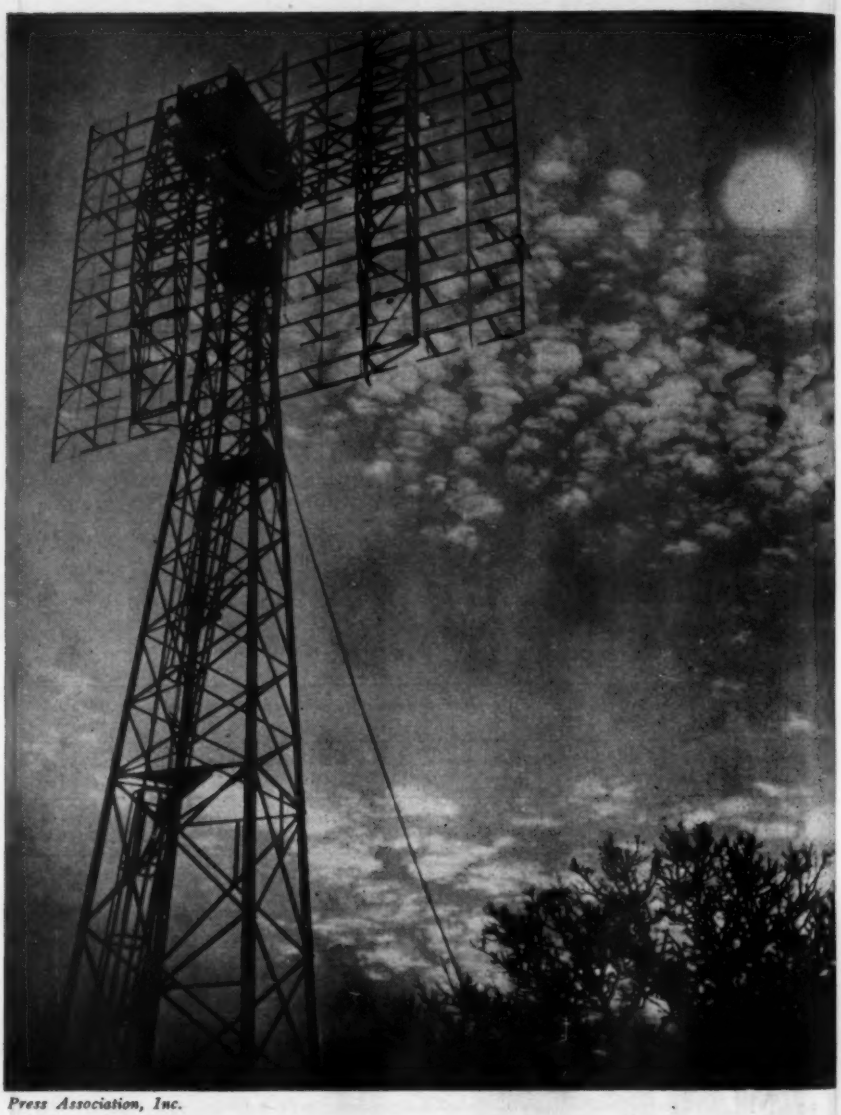
Utilities Almanack

February

28	T[h]	¶ *American Water Works Association, Minnesota Section, will hold meeting, Minneapolis, Minn., Mar. 14, 15, 1946.*

March

1	F	¶ *American Society for Testing Materials ends spring meeting, Pittsburgh, Pa., 1946.*
2	S[a]	¶ *Southern Gas Association will hold annual meeting, Galveston, Tex., Mar. 21, 22, 1946.*
3	S	¶ *New England Gas Association will hold annual business conference, Boston, Mass., Mar. 21, 22, 1946.*
4	M	¶ *National Rural Electric Coöperative Association will begin annual meeting, Buffalo, N. Y., 1946.*
5	T[u]	¶ *Edison Electric Institute, Commercial Section, will convene, Chicago, Ill., Mar. 26–28, 1946.*
6	W	¶ *American Gas Association, Conference on Industrial and Commercial Gas, will hold meeting, Toledo, Ohio, Mar. 28, 29, 1946.*
7	T[h]	¶ *American Water Works Association, New York Section, will hold meeting, Elmira, N. Y., Mar. 28, 29, 1946.*
8	F	¶ *Federal Power Commission resumes natural gas investigation hearing, Charleston, W. Va., Apr. 2, 1946.*
9	S[a]	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 3–5, 1946.*
10	S	¶ *North Central Electrical Industries convention and trade exposition begins, Minneapolis, Minn., 1946.*
11	M	¶ *Kentucky Telephone Association will hold sessions, Apr. 4, 5, 1946.*
12	T[u]	¶ *American Water Works Association, Canadian Section, will hold meeting, Niagara Falls, Ont., Apr. 8–10, 1946.*
13	W	¶ *Nebraska Telephone Association will hold convention, Omaha, Neb., Apr. 9, 10, 1946.*



Press Association, Inc.

Making Radar Contact with the Moon

This is an antenna that was used by the Army Signal Corps to make radar contact with the moon in an experiment at Bradley Beach, New Jersey.

Public Utilities
FORTNIGHTLY

VOL. XXXVII, No. 5 FEBRUARY 28, 1946

Holding Company and Other Acts Should Be Revised

The author recommends integration of utilities into regional systems, and, among other things, the adoption of the sliding-scale basis of rate making, the equalization of competition between privately owned and publicly owned utilities, and especially the equalization of the tax burden.

BY ELISHA FRIEDMAN

IN presenting these views upon the Public Utility Holding Company Act of 1935 (the result of extended study of the effects of the act and its administration), I do not seek to defend the old managements of the twenties.

They sinned and were visited with punishment. New managements have taken over. Younger men, some from other industries, are now in charge. Nor do I speak for them. My appeal is on behalf of the public, the consumer, the investor, and the United States Treasury.

MY recommendations, in summary, are as follows:

1. Order the industry to prepare a plan to integrate the utilities into regional systems under § 30 of the Public Utility Holding Company Act of 1935, and apply the disintegration clause only against companies that refuse to integrate.

2. Abolish the search for original, aboriginal, or reproduction cost, prudent investment value, or yardstick plant. Instead, use the sliding scale, a device proved for almost a hundred years in Great Britain, whereby the annual increase of earnings is allocated two-thirds or more to the consumer and one-third or less to the investor.

Amendment would be required in several sections. Section 208 of Federal Power Act, Part II, deals with cost and rate making of the public utility holding companies. Section 301 of this act deals with the accounts as do also § 15 of the Public Utility Holding Company Act and Rules U-26 and -27.

3. Equalize competition between privately owned and publicly owned utilities. Especially equalize the tax burden. Section 101 of Internal Revenue Act, dealing with tax exemption from corporate income and individual income from securities, would have to be revised.

4. An impartial scientific body like the Brookings Institution or the Harvard School of Business could digest and coördinate the vast amount of material to support these recommendations, which is available in the files of SEC, in the briefs, before the courts, and in the records of the utility companies.

5. An outstanding committee of high-minded, disinterested, public-spirited citizens should be appointed to bring a fresh and unprejudiced approach, and to present recommendations in the interest of the public.

The rest of this discussion has been divided into three parts: What have been the effects on the consumer, the investor, and the public at large (Part I); what have been the errors and the fallacies underlying the administration of the "death sentence" clause (Part II); next, what must be done (Part III).

I

LET us examine what have been the effects of the Public Utility Holding Company Act of 1935 and its administration.

What have been the effects on the consumer? The act assumes that consumers are hurt by holding companies. But the facts show that they are benefited. The rates for the subsidiaries of the holding companies are lower than the country's average. Briefs filed by the Comonwealth & Southern, North American, and Electric Bond and Share, furnish abundant supporting statistics.

The Public Utility Holding Company Act brought no benefits to the consumer. Residential rates fell faster before the act was passed than after. The SEC briefs never proved that the holding companies hurt the consumers or that the passage of the act benefited the consumers.

The SEC theory is that utilities should finance more with stock and less with bonds. But the evidence shows that the higher the bonded debt, the lower the rates to the consumer. In a series of 20 companies listed in a brief to the SEC, the Portland General Electric Company, which had the highest bonded debt, showed the lowest rate to the consumers. The highest rate to the consumers, both small and medium, was in the Tampa Electric Company, which had no bonded debt—had only stock. The lowest rate of the 20 companies listed was in the Portland General Electric Company, which had 74 per cent in long-term bonds.

THE reason is obvious; you can sell a bond for about 2¾ yield, and you cannot sell a stock, or couldn't until re-

cently, under a 7 or 8 per cent yield. You can get your money more cheaply with bonds, and obviously it is better to have bond capitalization than stock capitalization. Public utility rates have persistently declined even in periods when the cost of living was rising. That goes back for six decades before the SEC act was put into effect.

What has been the effect on the investor? The "death sentence" clause requires liquidation. Liquidation means sacrifice. Compulsory liquidation prevents realizing fair values. Abundant proof is available. Stocks of companies split from holding companies were sold to the investors at low prices, and thereafter rose sharply in value, benefiting new speculative purchasers and freezing the losses of hundreds of thousands of former owners; namely, holding company stockholders. Houston Lighting and Public Service of Indiana are cases in point.

The threat of disintegration has reduced prices for stocks. The SEC briefs show such a collapse of prices. At present prices, yields on holding company stocks are high and the shares cannot be used as a financing medium. Until the disintegration clause was put into effect, there was vast expansion—from 1880 until 1933—through the sale of holding company stock to the public and the doling out of the cash to thousands of little companies that could not borrow money on their own at those rates.

THE "death sentence" destroys the value of diversification and supervisory management. The large investor in his own person can realize these two benefits. The small stockholder cannot. If the SEC separates operating companies from the holding companies, the problem of access to cheap technical managerial service will become important. It is already a problem for municipal systems which rely upon intermittent consultation with private firms. The Twentieth Century Fund, an impartial body, confirms these opinions in its publication, "The Power Industries and the Public Interest."

The losses to over a million stockholders run into billions. Depending on the index of share prices used, whether Standard Statistics, Dow-Jones, or the New York Stock Exchange, and depending on the interval, whether beginning in 1925 or 1930 or 1932, the loss, as of the summer of 1943, comparing utilities and industrials, varied from a conservative $3,000,000,000 to perhaps $6,000,000,000. But on the London stock market, where no "death sentence" clause affected utilities, the utility stocks moved proportionately with the industrial stocks.

What was the effect of SEC administration on institutional holders? The insurance companies liquidated their utility stocks from 1934 to 1942. The national banks liquidated their utility bonds. The yield on utility securities,

¶ "THE *Public Utility Holding Company Act brought no benefits to the consumer. Residential rates fell faster before the act was passed than after. The SEC briefs never proved that the holding companies hurt the consumers or that the passage of the act benefited the consumers.*"

both stocks and bonds, rose above the industrials. As a result, new issues of utility stocks declined and eventually practically ceased.

"The order for dissolution . . . is not an order against a holding company but against its security holders." Security holders are chiefly small people. From 70 to 90 per cent of the stockholders own less than 100 shares in a representative series of industrial railroad and utility companies.

MILLIONS of stockholders are punished for the sins of a few speculators. These stockholders are innocent holders for value and are being punished by retroactive legislation. They bought when the practices now condemned were regarded as legal, both by the approval of state commissions and by the silence of Federal bodies. The SEC has power over the investor but has no responsibility to him.

The SEC is reorganizing solvent companies without the consent of the stockholders, and sometimes even without their knowledge. The "reorganization" of solvent corporations is authorized by no law. It is based on fanciful interpretations. Congress in no part of the act stated "You may reorganize solvent corporations." It is all a matter of interpretation. Have stockholders no rights? Can the SEC destroy contracts? Millions of American citizens are victims of the fantasies of the SEC staff.

What has been the effect on the public? The public was not benefited but hurt. The "death sentence" clause checked utility expansion. From the years 1919 to 1932, including two panics, the average annual construction was above $650,000,000. For the normal period 1923 to 1927, it was $830,000,000. In the years 1934 and 1935, when the utilities were under attack, new construction averaged $150,000,000 per year. This decline of about $700,000,000 was equivalent to a good-sized public works program.

THE "death sentence" clause caused a decline in the rate of growth of private generating capacity from an annual average of 5,700,000-kilowatt capacity in the period 1920-1933 to 1,600,000 kilowatts from 1934-1938. In the increase of generating capacity, the ratio of construction of private to public capacity decreased from over fourteen times from 1920-1923 to less than once from 1934-1938. In other words, there was more expansion in public generating capacity in 1934 to 1938, but in 1920 to 1923 private capacity was fourteen times public. The utility industry could give substantial employment if harassing legislation were constructively amended.

The Securities and Exchange Commission in its administration has ignored the sensational increase of taxes of utilities. In 1944 the utilities paid $704,000,000 in taxes. This was about 24 per cent of the gross of about $3,000,000,000. Of this sum, $468,000,000 were Federal taxes, or 16 per cent of gross. The federally owned utility properties pay no Federal taxes. Yet since 1934 Federal taxes increased about $400,000,000. This is equivalent to an additional rate reduction of 15 per cent by private companies only.

Yet the Treasury lost revenue through SEC policy. Income taxes of formerly privately owned companies disappeared. Corporate income taxes

are no longer paid by companies now publicly owned and therefore tax exempt. The Treasury receives no individual income taxes on dividends that used to be paid, but payment of which was checked by SEC policy. The Treasury receives smaller inheritance taxes because of the collapse in the value of utility stocks in estates of decedents.

WHO makes good this vacuum? The income taxpayers in the lowest bracket are financing a cockeyed SEC policy which is not integrated with fiscal policy. A conservative shrinkage in revenue would be $120,000,000. This is equivalent to the amount paid by several million taxpayers in the lowest brackets.

Over 2,000,000 people in the lowest income tax brackets must pay revenue to the Treasury in order to furnish the cash with which the Federal Treasury subsidizes public-owned utilities. Some poor devil in Waxahachie, Texas, is paying income tax to give some millionaire in Seattle cheaper electricity. Does this make sense? Is it ethical to burden taxpayers in the lower brackets of income to benefit consumers of electric current who may be in the highest brackets? The tax-paying public is not aware of this injustice, but it is paying for it.

SEC policy has fostered public ownership. But since 1923 the trend toward public ownership has declined sharply. Since 1938, despite Federal aid, the trend against public ownership continues. Though municipal electrical utilities increased only 800 kilowatts from 1938 to 1944, Federal power projects increased from 1,500,000 to 5,800,000 kilowatts, or 3.9 times.

But the publicly owned utilities have benefited by exemption from war taxes. Let us compare two companies for the same periods of 1942 and 1941. The privately owned Virginia Electric & Power Company showed an increase in gross of 20 per cent, but a decline in net of 35 per cent because Federal taxes rose 85 per cent. But the publicly owned Seattle City Light showed an increase in gross of 26 per cent, and an increase in net of over 400 per cent, because it paid no Federal taxes. How long can private enterprise stand such cheating?

IN the Soviet Union, the Dnieprostroy Hydro-Electric plant pays a 40 per cent corporation income tax to the government, but our TVA pays no Federal tax. Why must we out-Bolshevik the Bolsheviks?

The search for historical cost increases public ownership. The SEC is not authorized to set rates. So it uses the Federal Power Commission as part of its wrecking machinery. Ancient costs are used as a basis for exchange of securities under the "death sentence" clause. Yet state commissions reject historical cost as a rate base. The Securities and Exchange Commission depresses prices of securities of private companies and then public companies buy the property and it looks like a rescue party. In Wall Street this is crooked tactics. Is it less so under government aegis?

Cities paying no Federal tax can outbid any private buyer for a utility splinter, chipped off from a holding company. They capitalize the tax savings. The property value set up on the books represents a huge write-up above cost. But the SEC connives at it. This write-up is then written down, by issu-

Solvent Company Reorganization

"THE SEC is reorganizing solvent companies without the consent of the stockholders, and sometimes even without their knowledge. The 'reorganization' of solvent corporations is authorized by no law. It is based on fanciful interpretations. Congress in no part of the act stated 'You may reorganize solvent corporations.' It is all a matter of interpretation."

ing tax-exempt bonds in payment and thus cheating the Treasury a second time. The taxpayer gets whipsawed coming and going. But he does not know it yet. This scandal should be publicized by Congress.

II

WHAT are the errors and fallacies underlying the "death sentence" clause?

Here are the unfounded assumptions of the SEC: 1. The holding company is inefficient and uneconomic. 2. Large holding companies hurt consumers, investors, and the public, therefore the death sentence is required. 3. Integration is less desirable than disintegration. 4. The utilities have been inadequately regulated. 5. There is no need of revising the act or its administration. These are the assumptions. Let us examine them.

Holding companies have proved of value in big business. Practically every big industrial, railroad, and utility business is a holding company. Small business suffers because there are no holding companies available to furnish equity capital. Before the Committee on Small Business of the House of Representatives on April 12, 1945, I made a plea for small business holding companies. "Risk money is needed. Therefore, it is necessary to mobilize trickles of small incomes to serve a particular industry. Such holding corporation would provide technical supervision and management, standardized accounting, and financial aid and advice. The holding corporation stock could be offered publicly, and eventually be listed. Thus, new money could be raised for small business which was hitherto excluded from the capital markets." Some weeks later, I reread my brief and found that what I thought was an original idea had been in effect for over sixty years in the public utility industry.

HOLDING COMPANY AND OTHER ACTS SHOULD BE REVISED

Professor M. W. Waterman of the University of Michigan analyzed by punch-card methods the records of 18,000 communities having over 250 inhabitants. A total of 636 utility companies, 182 independent and 454 subsidiaries, were studied. These furnished about 96 per cent of the total private service. His book was submitted as evidence. Its data refuted SEC theories.

Local management and small size do not make for efficiency. Small holding companies are not more efficient than large. Distance of the operating subsidiaries from holding company headquarters is not an adverse factor.

State regulation of holding company subsidiaries is as effective and adequate as state regulation of independent utilities. Executive expenses for holding company subsidiaries are lower than for independent companies. The SEC "Summary of Economic Data" supports this conclusion.

U. S. Commerce reports show that executive salaries are a smaller percentage of gross income for the public utility industry than for any other major industry. They quote the construction industry, percentage of executive salaries, 4.4; general manufacture, 2.3; mining, 2.1; transportation, 1.3; trade, 1.1; electric light and power manufacture, .6.

Therefore, Professor Waterman concludes that facts, publicly available, disprove the assumptions underlying the SEC's administration of the act. Indeed, the study shows "no disadvantages of holding company control and some positive advantages."

The SEC fallacies and fantasies about consumers are disproved. Professor Waterman's study also shows that customers' rates are higher for small companies than for large companies. Rates are higher for independent companies than for subsidiaries of holding companies.

SEC officials "aim to protect the consumer," but rate reductions were more rapid before 1935 than since. Electricity rates to the consumer fell while other elements in the cost of living were rising.

SEC wails about write-ups in relation to historical costs. But Professor Waterman's analysis shows that rate reductions were more rapid for holding companies than for independents. SEC figures a total write-up of 9 per cent on the assets. But from 1926 to 1941 rates declined 53 per cent, due chiefly to holding companies.

The consumers in the small communities are the greatest beneficiaries of the holding companies. In the Electric Bond and Share system, about 90 per cent of its communities have less than 3,000 in population. Over 2,600 of these communities never had electricity until Electric Bond and Share furnished it.

The SEC also entertains fantasies about the investor. It claims that holding companies raise capital uneconomically. But Professor Waterman's study proves that subsidiary companies took advantage of lower refunding rates more than the small independents did.

Preferred stock dividends were earned by 93 per cent of the subsidiaries but only 72 per cent of the independents. "The investor has a better chance of safety in the securities of subsidiaries than independents." The SEC hugs the fantasy that holding companies failed to provide equity cap-

ital. But Professor Waterman proves that "holding companies provided equity funds for small subsidiaries which was not matched for the small independents."

THE emphasis should not be on the holding companies' capitalization, but on the holding companies' performance.

The write-ups have been written down by tax increases and rate reductions. The increase in Federal taxes from 1934 to 1942 was about $400,000,000. Capitalized at 2¾ per cent, this is a government first mortgage of $14,500,000,000, or ten times the write-up of $1,400,000,000 which the Securities and Exchange Commission so deplores. Again, rate reductions are running about 4 per cent per annum for typical holding companies like North American. As holding companies generally showed the same rate, a write-up of 9 per cent is equivalent to about two years of rate reductions.

The SEC claims that small-sized local ownership is desirable. But Professor Waterman shows: "The bond market is willing to bid higher prices on lower yields, as the size increases."

The SEC in 1942 warned about declining earnings. But earnings have increased. Though costs of fuel, materials, and labor have risen substantially, selling prices or rates have not risen, but have declined. The SEC was talking through its hat.

Instead of proudly referring to its 1934 forecast of declining earnings, it should discreetly forget a forecast that was so grossly fallacious. It frightened small investors, caused them to sell at a loss, and gave speculators a harvest.

Capital structures in the utility industry are simple compared to some in the railroad or industrial field. The New York Central shows ("Moody's" 1943, pp. 1,215-1,220) about 250 subsidiaries. In the industrial field there are even more complicated structures. The Standard Oil Company of New Jersey ("Moody's" 1943, pp. 1,605-08) has more than 300 subsidiaries which are partially owned.

THE SEC has ordered the dissolution of numerous holding companies and the granting of voting rights to preferred stockholders who never asked for this right. But the preferred stockholders of the holding companies of railroads and industrials are to be subject to no such reorganization.

The SEC has ordered the cancellation of existing common stock interests and voting control; the subordination of holding company claims to the claims of public investors. What are these holding companies which are to be subordinated to the claims of public investors? They are not abstractions. The holding companies are owned by the public too. On what theory of law or logic does the SEC set off one group of public investors owning holding company shares against another group of public investors owning operating company shares?

The reorganization, by the SEC, of solvent companies is, in my opinion, contrary to the interests of the investors. Congress did not intend to vest the SEC with such power. The Bankruptcy Act expresses the views of Congress on reorganization. Security holders have a right to be heard.

The SEC purports to protect the in-

vestor but it did not utter a peep when the investor was virtually expropriated by "tax discrimination to foster public ownership of utilities," as was stated by former Chairman Peterson of the Wisconsin Public Service Commission. The SEC never lifted a finger to help the public utility industry or its investors. But the ICC *did* make recommendations in its report, and did go before Congress on behalf of the railroads and its investors. It urged regulation of trucks and other competition. It urged relief from capital gains tax on bonds bought back below par. It studied comparative wages, hours, and taxation of trucks and other competitors of railroads.

THE "death sentence" clause did not benefit the investor. "The substantial progress" mentioned by SEC in its report meant substantial loss for investors. The doctor reports progress —meanwhile the patient dies. Suspending the "death sentence" clause might save the investor and the industry.

The SEC has fantasies also about the interest of the public. The holding company is said to be an evil and it must be destroyed in the public interest.

What are these "wicked" holding companies? In 1882 the first holding company was formed, now the United Gas Improvement Company, which the Securities and Exchange Commission has destroyed. In 1890 Henry Villard founded the North American Company. The Electric Bond and Share Company was organized in 1905 by General Electric Company to serve the small communities. More than 90 per cent of its communities now have fewer than 3,000 inhabitants. Many would be without service but for the holding company. Its rates were reduced from 14 cents per kilowatt hour in 1905 to 3.5 cents in 1942.

By 1929 over 80 per cent of the electricity generated and 98½ per cent of the electricity sent across state lines was controlled by holding companies. Without holding companies our electricity supply would have been confined to areas of dense population, as in England. From 1912 to 1942 our total kilowatt-hour output increased 12.3 times, but the total revenue only 8.4 times. The average rate per kilowatt hour in residential use decreased from 8.7 cents to 3.7 cents, a decline of 58 per cent. But the cost of living increased 68 per cent. The holding company reached its highest development in the United States. The holding company stimulated the economic growth of the United States. The horsepower per worker shows an accelerating rise, except for the decade 1929 to 1939, and is today the highest in the world.

THE rise in wages of the American worker runs parallel with the rise in horsepower per worker. Electric expansion, under the holding company

¶ "BY *1929 over 80 per cent of the electricity generated and 98½ per cent of the electricity sent across state lines was controlled by holding companies. Without holding companies our electricity supply would have been confined to areas of dense population, as in England.*"

systems, created greater productivity, higher wages, and shorter hours.

Holding company abuses did exist in the past. They have been corrected. To protect consumers, investors, and the public, holding companies need not be destroyed.

The weakness of the "death sentence" clause is revealed in the inconsistencies, paradoxes, and conflicts in which it is entangled. In § 30, Congress issued an order to the commission on integration. This is unconditional, unequivocal, and absolute. But § 11, on disintegration, is conditional and ambiguous. Yet the SEC in administering the law deliberately flouts the absolute order of Congress on integration, and presses indiscriminately the contingent clause, without inquiring whether the conditions precedent justify disintegration.

The public utilities of the United States ought to be consolidated. Under the law in § 30 of the act, Congress ordered the Securities and Exchange Commission to prepare an integration plan. But the SEC ignored this mandate for over ten years. Should not Congress take note of this dereliction and defiance?

YET, the utilities had already been partly integrated. In the early days of the industry, there were about 2,000 small power systems. By 1935, when the Holding Company Act was passed, the industry was concentrated in about a score of holding companies. Instead of improving and reforming the integration, the SEC has been disintegrating the industry and calling it integration.

The SEC, instead of attempting to mold the future, is trying to undo the past. In the worst days of the destructive efforts of the SEC, investors were frightened and securities were depressed. Then the SEC stated "so-called bonds and preferred stocks of holding companies are a snare for the unwary."

Today these "snares" are selling above par, up to 150 a share. The SEC has created the greatest speculative movement, both down and up, in the history of the industry. But on the down side, the little investors were frightened out, and, on the up side, shrewd speculators made fortunes. No wonder a Federal judge said that "The wisdom of the legislation . . . is not the concern of the court."

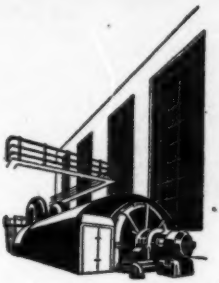
If the "death sentence" clause were suspended, these securities would again become the prime investments they used to be. Long-term investors, insurance companies, university funds, and employees' pension funds are still large holders of these "snares for the unwary" bought many years ago.

III

WHAT must be done? The act should be revised.

It was drafted in an emotional atmosphere. It followed exposure of shocking breach of trust in important quarters. Such malfeasance cannot recur under the law. The public attitude has changed toward public utilities and public ownership. Damning the utilities is a dead issue in a day of atomic bombs, revolutions, $300,000,000,000 debt, UNO, and labor strife. The postwar program demands a free and healthy utility industry, which could employ demobilized soldiers.

This law has not been revised for



Federal Subsidy Policy

"OVER 2,000,000 people in the lowest income tax brackets must pay revenue to the Treasury in order to furnish the cash with which the Federal Treasury subsidizes public-owned utilities. Some poor devil in Waxahachie, Texas, is paying income tax to give some millionaire in Seattle cheaper electricity."

ten years. The Interstate Commerce Act was revised thirty-eight times in fifty-six years; the Civil Service Act, sixty-two times in sixty years, and the Federal Reserve Act, seventeen times in the first ten years, and fifty-one times in thirty years. *But the Public Utility Holding Company Act has never been revised. Why not?* Is it not time that we revised it?

Congress should promptly suspend § 11, the disintegration clause, and order a thorough investigation of the fantastic theories and ruthless practices of the SEC in administering the 1935 act. Regulation of utility holding companies under the act of 1935 has made unnecessary the "death sentence."

CONGRESS should hold exhaustive hearings on the assumptions of the SEC and the results of its administration, and interested parties should be invited to appear. Some of these groups might include the following:

Consumers — consumer organizations, public utility commissions.

Electrical equipment industry, officials of the leading electric manufacturing companies.

Investors, presidents of the New York and out-of-town exchanges, officials of the Investment Bankers Association, American Bankers Association, etc.

Utility managers, representatives of operating companies and holding companies.

Employees in the utility industry itself.

Representatives of municipally owned properties, showing the effect on the consumer, investor, or tax revenues, of splitting off small, independent companies from a holding company system.

Tax officials, Federal, state, and local—this will show the loss in revenue and the fiscal cost of the policy of breaking up the holding companies.

Independent electric engineers consulted by both small municipal plants and by large holding companies, showing cost of continuous *versus* occasional service.

Congress should enforce § 30 before § 11. Section 30 remained unchanged in all the draft of bills preceding the final draft, but § 11 was changed frequently. That is, the integration clause was unchanged all the way through, but § 11 was changed frequently.

SENATOR Wheeler urged integration before disintegration. He said: "Holding companies are given five years to arrange their affairs their own way, and the commission is directed to aid such arrangement on a voluntary basis." Representative Rayburn stated that § 30 was "designed to promote information, to serve as a basis for reorganization," and stated clearly that integration was to precede disintegration.

Integration is implied in the wording throughout § 11. Both § 11(a) and § 11(b) mention "an integrated public utility system."

Section 30 [15 USCA § 792-4] near the end expresses the dominant note:

> The commission is authorized and directed to make studies and investigations of public utility companies, the territories served or which can be served by public utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer.

The law is clear and unmistakable. How does the SEC defend its noncompliance? The law shows constructive statesmanship and the vision of regional integrated systems, benefiting the consumer and investor and the public. But the SEC, in its administration, shows only a lamentable lack of appreciation of this quality of the law.

EVEN the SEC brief to the Supreme Court urging disintegration constitutes a strong argument for integration. "Rival holding companies' acquisition of utility property has deterred reasonable integration . . . There has been uneconomical location of generating plants . . . overlapping transmission lines. . . . Each one (holding company) will not permit the other to consolidate the assets into an integrated system." These are the arguments which the SEC uses to support the "death sentence" clause. But these arguments call for regional integration, not disintegration.

But the SEC in its brief says "even a preliminary study . . . would take an indefinitely long time. . . . The final task could not ever be completed." In other words, the SEC tells the court that Congress didn't know what it was talking about in § 30, whereunder "The commission is directed to make studies to determine sizes, types, and locations of public utility companies." But Justin Whiting, president of Commonwealth & Southern Corporation, stated that "rearranging the power systems will not be done in a lawsuit but in a study by engineers and economists,

with practical knowledge, patience, imagination, and a constructive spirit."

The United States has already integrated, on a nation-wide basis, one type of public utility holding company, the American Telephone and Telegraph Company. It covers the entire country. It is the top holding company. Though its subsidiaries are now chiefly operating companies, they are also subholding companies having operating subsidiaries. The American Telephone and Telegraph Company also owns the Western Electric Company, a manufacturing subsidiary, which is partly a holding company owning 30 subsidiaries.

THUS American Telephone and Telegraph is still a 3-story holding company in part, though in the course of time it will eventually become a 2-story holding company. The integrated Bell system operates 6,200 exchanges with 23 companies, but the independents operate 12,000 exchanges with 6,200 independent companies. There is no comparison whatsoever between these two types of telephone companies in efficiency, service to the consumer, safety to the investor, and value to the public.

The United States has also another completely integrated public utility holding company on a nation-wide basis, the Western Union Telegraph Company. A special law was passed to authorize this integration. It absorbed the Postal Telegraph Company. The Western Union, though chiefly an operating company, owns 538 telegraph corporations, of which 33 still are corporate entities. Its subsidiary, the American District Telegraph Company, is a holding company having operating subsidiaries. Therefore, in part, Western Union is a 3-story holding company.

Why do we apply a different theory to a telephone utility, a telegraph utility, and to an electric power and light utility? Our telephone system is the most efficient in the world. Regional integration of holding companies in the electric power and light field would undoubtedly increase efficiency, lower costs to the consumer, increase safety for the investor, and better serve the public interest.

If we effect regional integration into 12 or 16 regional holding company systems, we shall enjoy efficient management, lower costs, acceleration of rate reductions, and service to interspersed rural communities.

IF the voters then choose government ownership after a decade or generation, we shall have an efficient public ownership. Therefore, even its advocates should favor integration before disintegration. The wise play for long-pull benefits, but the petty prefer prompt advantage. The integration plan could provide for acquisition by government on terms used in Britain since 1844; *viz.*, payment of 25 times average earnings of a normal period of years.

We could well follow the British precedent. When they consolidated their railroads they appointed an amalgamation tribunal of outstanding public men. To these men, the voluntary integration plans were submitted by the industry within the time limit set by the government. Our SEC even denies the possibility of integration.

Our utility industry should be ordered by Congress to submit, within a

¶ *"WHY do we apply a different theory to a telephone utility, a telegraph utility, and to an electric power and light utility? Our telephone system is the most efficient in the world. Regional integration of holding companies in the electric power and light field would undoubtedly increase efficiency, lower costs to the consumer, increase safety for the investor, and better serve the public interest."*

limited period, a plan of integration to an independent board of men like B. M. Baruch, outstanding public servant; John Hancock, banker; George O. May, accountant, or other representative of the American Institute of Accountants; John W. Davis, or other ex-presidents of the American Bar Association; and R. W. Peterson, former chairman of the public service commission of Wisconsin, or other representative of the National Association of Railroad and Utilities Commissioners; Gano Dunn, an engineer with vast experience in utility construction, or other representative of American Society of Civil Engineers or Electrical Engineers; ex-President and engineer Herbert Hoover; ex-Secretary Henry L. Stimson, statesman above parties; and Justice Owen J. Roberts, head of the Pearl Harbor investigating committee.

THE time limit for preparing a plan should be twenty-four months, with a short period of grace as in Great Britain. If the industry does not prepare a plan within the time set, the above board of distinguished men should have its own experts prepare one. Holding companies which refuse to coöperate would be subject to disintegration under § 11. This potential disintegration would enforce voluntary coöperation.

All first-tier holding companies would become regional or geographical systems, and would include, as in Britain, all public and private companies in the region. The second-tier holding companies could become investment companies, either specializing in utilities as in British, Swiss, or French investment trusts, or else they might be required to reduce their utility holdings to some fixed percentage after several years. The new senior securities should be convertible into common stock and would disappear as the common stock rose. A simple capital structure would thus result.

Congress should reorganize Federal regulation of public utilities. The SEC deals with securities chiefly. Suppose in 1935 there were no ICC. Would any one think of putting railroad regulation under the SEC? Why should it regulate utilities? The task should be taken away from the SEC and vested in a separate Interstate Utilities Commission, corresponding to the Interstate Commerce Commission for the railroads. A separate utilities commission should be created which is business minded, rather than legalistically minded. It should be staffed by engineers and managers, rather than by lawyers. The commissioners should be required to have public utility experience.

HOLDING COMPANY AND OTHER ACTS SHOULD BE REVISED

A FEDERAL advisory council of public utility executives should meet periodically with this commission, using the Federal Advisory Council of the Federal Reserve Board as a model.

Congress should tax all publicly owned utilities, municipal, city, or Federal. The reasons are many. The government needs revenue. Here is a new source of just and painless taxation. Competition should be equalized between public and private enterprise. The government yardstick plant is a fake yardstick. It should be made true. I had some correspondence with Chairman Leland Olds of the Federal Power Commission. Its Table R-22 gives electric rates from highest to lowest by cities. This table put in the second lowest group Cincinnati and Covington, served by privately owned properties subject to Federal taxes, and Nashville, Chattanooga, and Knoxville, served by publicly owned properties not subject to Federal taxes. If these did pay, they would drop to forty-fourth place. I asked Chairman Olds why the report did not present the facts accurately and indicate the increase in consumers' rates due to taxation. He replied that the commission did not try to explain the facts but merely recorded them. But is such a record truthful? Suppose a bolt of cloth bearing the label of 100 per cent virgin wool were made of shoddy? Suppose plated jewelry bore a sign 18-karat gold? Suppose green, straight whiskey bore the label "bottled in bond"? Private companies making such misrepresentations would be punished by law. Must we legislate ethics to our administrators? Should not Congress order the Federal Power Commission to present the facts accurately? Certainly, the reader is deceived by the present sequence.

WE should cease to subsidize public ownership by taxes on the basis of dishonest accounting. The realist, Lenin, once said: "Socialism is state electricity plus bookkeeping." What is our own state electricity minus bookkeeping? Bankruptcy! Financial bankruptcy for competing private utilities and political bankruptcy for the fostering public officials. Competition should be equalized between private and public enterprise. Public ownership should not be subsidized on the basis of dishonest accounting and tax discrimination.

If the government is to take over the utility service, let it be not of fragmentary companies, chaotic and uncoördinated as at present. Let the government take over the regional integrated systems after their efficiency has been developed and proved. Let the government acquire them not by confiscation of the small stockholders, but by compensation, as the British Labor government has done.

But the ardent confiscators need not worry. Compensation would be only a temporary and illusory concession. The tax collector will take it back in inheritance tax, in one generation. The government will then have both the property and the compensation.

¶ "THE *line between legitimate and illegitimate experimenting with atomic energy will be difficult to draw.*"

—EDITORIAL STATEMENT,
The New York Times.

The Nonprofit Subterfuge For Acquiring Public Utilities

Part III. *Illegal nature of procedure*

The author concludes that the attempt to take over utility property by the so-called "nonprofit" corporations will not stand the legality test and that public ownership can be promoted and accomplished by other and more familiar means.

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LET us now consider the final and controlling question as to whether a city or other political subdivision may lawfully acquire utility properties through the short cut of an intervening nonprofit corporation. To give our analysis a timely flavor, let us assume a hypothetical situation which is quite likely to occur in actual practice as the result of the Federal government's administration of the Holding Company Act.

Here is our situation: A holding company fears that it will be compelled to sell a local utility property. The city in which the property is located hesitates to acquire the property by exercise of eminent domain. The legislature has created a special and local power district to acquire the specific property; but this district is blocked from proceeding by injunction attacking the constitutionality of the act by which the district was created. An outside public power district desires to acquire the property; but it has been expressly deprived of the power to do so by an act of the legislature.

THE officers of the local power district, in order to avoid the injunction, and convinced of their own virtue and superior judgment, attempt to act as private individuals to secure the property and hold it until such time as a legally authorized public agency, not

yet identified and not yet created, can take over the property. These citizens, acting (if they can) as private individuals, proceed to negotiate all the terms, provisions, and conditions under which the property can be so acquired.

The holding company, the private individuals, and the outside public power district, which is forbidden to acquire the property, enter into an agreement among themselves (whether binding or not is beyond the scope of our inquiry) that they will cause a nonprofit corporation to be organized, in order to avoid statutory obstacles, which will act as the agency of the three groups in effecting their agreed program. This corporation will have no assets, but will be financed by the outside public power district which is at the time prohibited from acquiring the utility. The parties all agree that new legislation is necessary to permit this arrangement to be carried into execution, and they agree that through the medium of the nonprofit corporation they will endeavor to obtain that legislation at the next session of the legislature.

THE outside power district supplies the money to the nonprofit corporation which purchases the common stock of the utility and pledges it as security for the loan. It then proceeds to take over the management and operation of the utility and to effectuate the original agreement between the several parties, to execute contracts which govern the operation of the property and all further proceedings in the completion of public acquisition of the entire ownership.

No dividends of net profits are to be paid by the nonprofit corporation; but the members thereof may have such compensation as they may determine to be appropriate for their services. The price paid for the common stock necessarily establishes the value of the entire property because the remaining ownership which must be acquired is represented by bonds and preferred stock. The agreements made by the nonprofit corporation—pursuant to the prior agreement of those who caused it to be organized—provide for the disposition of the net revenues of the utility by impounding them until such time as the common stock has been fully paid for; they provide for a sort of joint operation of the utility in association with the outside power district, it being alleged that profits accrue to each of them.

THE members of the joint enterprise select and pay a commission to an agent who in a very practical way represents all interested parties at one and the same time; they select and pay the commission of the financial houses who participate in financing not only the purchase of the common stock, but of the future acquisition of the entire property. The members of the nonprofit corporation, directly or indirectly through persons appointed by them as officers and directors of the utility, continue to operate that utility on the basis of its customary charges, which of course are profitable, and they plan and arrange for such capital improvements as may be desirable.

After having acquired the common stock entered into these contracts, and completed all arrangements, the nonprofit corporation, by amendment of its articles of incorporation, asserts that its objective is to sell the utility prop-

erty to the local city or to any public agency, public body, or political subdivision, provided that can be arranged within a short and stated period, and that if such a sale is not effected before the expiration of that period, then it is its intention to effect a sale of the property to the outside public power district, which at that time is prohibited by law from acquiring same. This profession of an intention to sell the property to the public specifically provides that no public agency will be permitted to purchase the property except subject to all the terms and conditions set forth in the contracts pursuant to the original agreement of the original parties who created the nonprofit corporation as their agency to accomplish their program.

It will be noted that the proposition is not one under which the buyer has any discretion except to accept or reject the plan in its entirety. The proposal is not one to sell the property to a public agency upon terms and conditions arrived at as a result of free negotiation between purchaser and seller; on the contrary, the nonprofit corporation retains control of all the incidents of the complicated transaction.

It is asserted that, given this situation, a nonprofit corporation is a trustee for the public. As I have pointed out before, the public can act only through its legally constituted representatives, and therefore a trust for the public must have as its beneficiary a specific governmental unit. Such a trust under these circumstances, however, is executory and is not supported by any consideration received by the nonprofit corporation from any public agency. On the other hand, the nonprofit corporation has received money from a legally incompetent public power district, and assumed many obligations to the holding company and other owners of the utility. These other terms and conditions are sufficiently definite to be enforced (if legal), and the other beneficiaries are very definitely certain, and the other obligation is supported by consideration. Would it not appear, therefore, that if any trust exists, it is a resulting or constructive trust in favor of the holding company and the public power district?

The members of the nonprofit corporation are interested in the compensation which they will receive. The corporation itself, by means of stock ownership, controls and operates a separate organization for profit—that is, the public utility. This separate corporation pays revenues to the nonprofit corporation, whether directly or indirectly, which are used by the latter to pay off its indebtedness for the stock which it has purchased and owns. Any diversion of the revenues of the operating utility company, whether dis-

¶ "If *a public power district as an instrumentality of the state is barred by law from doing a thing it desires to do, it cannot create a nonprofit corporation to do it for itself, and give that corporation the character of an instrumentality of the state. The district does not possess the creative powers of the state itself . . .*"

guised as an operating expense or appropriated from net revenues, for use in paying for the common stock, is actually a pecuniary profit.

THE fact that the members of the nonprofit corporation have no discretion whatever and are merely carrying out the agreements entered into by other persons prior to incorporation and after incorporation literally adopted and put into effect, may limit the opportunity of the corporations or its members to profit by the transaction; but it remains true that the real parties in interest who caused the corporation to be created are all of them making a substantial pecuniary profit. If the nonprofit corporation is not so bound by its contracts and the trust resulting therefrom in favor of the holding company and the public power district, then the nonprofit corporation, while not paying dividends to the members, could, upon dissolution, distribute the property among the members to the profit of those for whom they might be dummies.

The effect and, indeed, the intention of this arrangement are to fix the conditions under which the public may acquire the utility, and this, of course, results in a limitation on public powers unless the public can destroy the various obligations created by means of court action. Nor can the public acquire the property subject to the conditions imposed without paying or ratifying the payment of profits to the holding company, the bankers, the agents, the public power district, and any other persons who eventually may be disclosed to have profited.

It is also noteworthy that the abuse of the nonprofit subterfuge apparently lies beyond even the casual protection of regulatory supervision (in contrast with the close scrutiny exercised over property sales between profit corporation utilities by both the Securities and Exchange Commission and the Federal Power Commission). Although the U. S. Supreme Court in the recent Saratoga Springs Case, and earlier decisions, has held that business activity of states themselves (as distinguished from their subdivisions and agencies) might be validly subjected to taxation and regulation, the Federal Power Commission has recently abstained (by a 3-to-2 decision) from exercising jurisdiction over the purchase of utility properties by a voluntary nonprofit corporation: This, on the theory that such corporation was voluntarily acting as a public agency of a political subdivision of the state. (FPC Release No. 2892, January 25, 1946.)

IN the light of the authorities, it seems to me that the nonprofit corporation is not at all a nonprofit corporation, that no public trust exists, and that the whole transaction is voidable on several grounds, including that it is contrary to public policy, and that the illegality in inception of the nonprofit corporation and the execution of contracts establishing the entire program could not be cured by subsequent legislation unless that legislation took the form of an act specifically validating the entire program. If the latter form of act should be passed, I believe the courts would find themselves compelled to hold it to be unconstitutional as against the public interest, contrary to public policy, and inconsistent with the powers and obligations of municipal and other subdivisions of the state.

Cannot Be Done Legally

"No one at all can employ the form and frame of a corporation organized not for pecuniary profit as the medium for the purchase of a public utility, which is, of course, a business for pecuniary profit, no matter who owns it, no matter who will eventually own it, and no matter whether its actual operation results in profit or loss."

It must be perfectly obvious that such a nonprofit corporation has no bargaining power whatever, both because it had no assets of its own and no power of compulsory acquisition through eminent domain, but also because it is dealing only on the terms of the seller and the corporation which is financing the purchase.

The stock of the utility, to which the nonprofit corporation owns the legal title, is subject to taxation by the state and the dividends received thereon are subject to taxation by the Federal government.

THE remedies for this situation may be several. The circumstances are such that a court of equity, without the intervention of the Attorney General, would have the power to forfeit the franchise of the nonprofit corporation and set aside all of its contracts, and thus destroy the entire plan. The situation is one in which it would be appropriate to disregard completely the corporate fiction and drop the nonprofit corporation entirely out of the picture. On the other hand, the public through the appropriate authorities might ask the court to affix a constructive trust upon the property and to appoint a receiver to effectuate and administer that trust.

The parties to the plan would have to decide whether to rely upon the existence of a trust or to deny it. In either event, they would have an unhappy time.

IF the corporate fiction is disregarded, we look first to those who created the corporation, and if they are mere dummies and controlled by others, and mere passive agents in the schemes of others, we look then to those others. And so here we might look at last to a private public utility holding company and to a public power district, which for its own advantage (and, concededly, perhaps also the advantage of the general public) has

sought ways around its legal disabilities.[1]

If a public power district as an instrumentality of the state is barred by law from doing a thing it desires to do, it cannot create a nonprofit corporation to do it for itself, and give that corporation the character of an instrumentality of the state. The district does not possess the creative powers of the state itself—otherwise we would have endless and appalling procreation.

In these situations where a nonprofit corporation is sought to be employed as a means of aiding or enforcing public ownership of utilities, it is not strictly necessary to call in engineers and accountants to follow each complicated device and to explore all of the ramifications and consequences of the setup. It would seem to be easier and more appropriate to go direct to the keystone of the arch, and that keystone is the nonprofit corporation itself. If that falls, the arch falls with it.

It makes not a whit of difference whether price and terms are very, very favorable to the public, or the opposite. The legality of the plan does not depend upon, and is not determined by, the fact of benefit or the extent of benefit. It depends upon considerations which are entirely apart from economic results. It does depend primarily upon fundamental principles of municipal or public law, and under those principles, if properly and promptly asserted and enforced by the proper parties, the whole scheme, however elaborate, complicated, and plausible, and even though well intended, is weighted with legal deception and must inevitably fail. It is true that action directed against these maneuvers could best be brought by the attorney general of the state. But if for any one of many reasons he should refuse or fail to act, it cannot be that one small group of citizens can defeat the right of other citizens to challenge the validity of their acts by merely wrapping around themselves the showy garments of a nonprofit corporation. Always there is a door through which one may approach the learned and virtuous chancellor in equity.

It is probably true that the nonprofit corporation can gracefully vanish as a target, provided it succeeds in finding a pliant public agency which will take over all the contracts and assume all the burdens and undertake to acquire the entire property. A totally different legal problem would then be presented. But if the nonprofit corporation fails to find a willing public agency as buyer, then the corporation is left in a lamentable position. For that reason the holding company or interested parties usually guarantee the members against loss and provide for recapture of all interests.

Conclusion

The praiseworthy experiment which failed in the 1890's cannot be revived successfully today — and should not be. Municipalities, public power districts, and other subdivisions of the state, must acquire their properties directly, openly, and by the exercise of such powers as are actually conferred upon them. Public officers must exercise their full discretion, and cannot act as private individuals, and cannot deprive the electors of a right to vote—if that is granted to them. No

[1] On disregard of the corporate fiction, see Fletcher, "Cyclopedia Corporations," Vol. I, p. 44 ff.

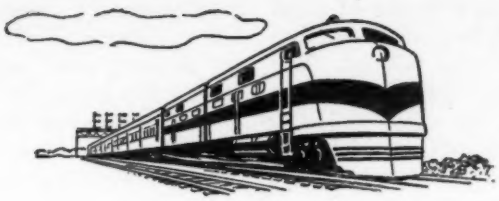
one at all can employ the form and frame of a corporation organized not for pecuniary profit as the medium for the purchase of a public utility, which is, of course, a business for pecuniary profit, no matter who owns it, no matter who will eventually own it, and no matter whether its actual operation results in profit or loss. No one, not even a nonprofit corporation, has the power to create a trust of utility property in favor of the public, on its own terms; and such an attempted trust does not change a profit corporation into a nonprofit corporation, nor a nonprofit corporation into an instrumentality of the state. Public bodies have their own powers and do not need and cannot accept such assistance. A nonprofit corporation, attempting to acquire a utility for the public, cannot be anything other than the tool of others, if it has no assets of its own and no independent purposes of its own; and it has no right, by operating the property at a profit, to compel the utility to pay for itself. No trust in favor of the public can exist where the one seeking to create it has in reality no substantial property to convey, but only contracts under which it may acquire property, if that property can pay for itself, and where it is plunged into a medley of onerous burdens, risks, and complicated obligations, and where the beneficiary cannot be identified with certainty, or is contingent, and where acceptance by public officers involves the surrender of their discretion or the disenfranchisement of the people, or the evasion of statutory provisions. Such a trust is a flagrant violation of public policy.

Incidentally, the nonprofit subterfuge may well have set an example for tax evasion. The lure of anticipated tax benefits through the use of the nonprofit corporation was shown in an item in *Business Week* for January 26, 1946 (page 68), to the effect that Ramsay Accessories Manufacturing Corporation of St. Louis, makers of piston rings, had been sold on a 20-year basis to a nonprofit corporation as trustee for New York University.

As I professed in opening, I have not aimed at precise accuracy, nor at completeness, nor at fortification of the expression or application of well-accepted principles by the citation of judicial precedents. I am not engaged to write a brief, nor compensated for expressing my opinions. I find the subject a pleasant diversion from more commonplace tasks. Having spent many years in the field of public law I could not help but find the present subject intensely interesting. Like most legal questions, it invites debate. While I have employed the current power situation as a vehicle for the discussion and application of legal principles, it is as an illustration only, for the same principles are involved in the public acquisition of any kind of property.

¶ "IF *the national policy of paying so much of the costs of our competitors with public moneys is continued and intensified until the railroads can no longer support themselves, no course is open except for the government to take them over and operate them.*"

—ROY BARTON WHITE,
President, Baltimore & Ohio Railroad.



Trends in Regulation

Extreme views as to control frequently held even by members of the regulatory bodies—Importance of good service.

By JOHN C. HAMMER
MEMBER, TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

MUCH has been said pro and con about utility regulation and utilities themselves.

There are those who believe that all utilities and transportation systems should be operated by the government and much of our present-day regulation tends to lead in that direction.

To such an idea many of us cannot subscribe, and we who believe in private enterprise, who are in the regulation field, especially if we happen to be members of regulatory bodies, are sometimes accused even by our associates, whose motives may be pure, of representing the interests of the companies we are authorized to regulate instead of the public interest. While this is an unfortunate situation, it is one that honest and courageous men must meet and overcome if the proper trends in regulation are to survive.

Unfortunately there are those who have attained membership on regulatory bodies who seem to be imbued with the idea that they must scrutinize every minute detail of the companies' business and who feel they are called upon to instruct the companies just what shall be done every step of the way. To my own mind that is not the real purpose of regulation.

Certainly regulation is necessary. Certainly the public interest must be protected, not only as to rates but as to the type of service which is maintained. It is quite true that far too little has been done, especially in the service feature. It is regrettable that some of our regulatory boards were set up to serve the interests of certain utilities rather than to protect the public. Others have deteriorated into this realm.

WHILE I am fully cognizant of the service the railroads have performed in this country and my own state, I must at the same time confess that our own commission either does not have sufficient legal authority or we have utterly failed to exercise what we do have.

I happen to be a small-town man and was raised in the country. My home

town is a thriving little city of about 5,000 souls. It is located on a branch line of a prosperous railroad. You would think such a town, in the midst of a fertile farming region and with some industrial plants, would be afforded a reasonable railroad service; but such is not the case.

Several years ago the railroad erected a nice little brick depot with modern facilities. In recent years all passenger service, except an occasional dilapidated old car hung on to the rear of a freight train has been abandoned and the station has been leased to a hame factory.

It is considered doubtful whether the commission has authority to order reinstatement of passenger service. This is a typical example of conditions existing at many other points within the state. It is a deplorable situation and it is to be regretted that the railroads themselves do not see fit to render adequate service to such communities.

Conditions such as this lead many well-meaning people to favor government ownership and operation. The fault can be remedied by proper legislation and intelligent regulation and coöperation between the regulatory bodies and the operators.

Sometimes one does wonder which way we should go in order to make sure that the general public gets what it is entitled to.

Shifting Trends on River Authorities

". . . it is interesting that, although the current political trend seems to be running against extension of the TVA pattern to other river basins, there is no question as to the steadily increasing support for these programs, particularly in regions that feel they have long been financially and industrially tributary to the great economic power centered in our Northeast.

"But I cannot emphasize too strongly the fact that this interest has got to be articulated into an effective demand of the people if the present well-financed efforts to deprive the people of the great benefits, which will flow from such a power program, are to be defeated. The interests behind the drive are determined to block the widespread development of power as a part of river basin programs unless assured that the power will be distributed by private power systems. They do not intend that the communities, whether agricultural or urban, which compose the country's river basins shall enjoy the opportunity to decide how power from Federal reservoir projects shall be distributed."

—Leland Olds,
Chairman, Federal Power Commission.

Government Utility Happenings

Deficiency Authorization For REA

CONGRESSIONAL action on a pending bill to grant the Rural Electrification Administration additional lending funds for the current fiscal year is being awaited with keen interest by Washington observers. Approval of the measure, which would authorize REA to borrow $100,000,000 from the Reconstruction Finance Corporation, would bring to a total of $300,000,000 the funds advanced to the agency for loans for the year ending July 30, 1946.

According to REA officials, the supplemental loan authorization is urgently needed for the continuation of the government's rural electrification program. As of December 31, 1945, they announced, only $58,000,000 was available for loans to coöperatives and other borrowers out of the $200,000,000 advanced to the agency for that purpose for the fiscal year. On the other hand, demands for loans since the end of the war have been greatly accelerated. Applications for loans totaling more than $200,000,000 were reported.

President Truman's request for the supplemental loan authorization listed several contingencies facing REA unless the measure is approved in the near future. These were:

1. Construction now in progress will be slowed down and in many instances actually halted before June 30, 1946.
2. New coöperatives cannot proceed with detailed construction plans because allocations must first be made.
3. The organization and establishment of new coöperatives are made difficult because allocations must be made in many states before certificates of convenience and necessity are issued, all of which must precede detailed construction planning.
4. No further allocations can be made in 21 states inasmuch as their apportionments of present loan authorizations have been exhausted or already committed for allocation.
5. No allocations can be made in connection with many applications now on hand from the 297 coöperatives which have received no allocations this fiscal year.
6. The rural electrification program cannot go forward in the most orderly and efficient manner, and an unnecessary delay in the extension of the benefits of electric service to rural areas would result.

MUCH of the reasoning in this justification has a familiar ring to Congressmen, especially members of a certain House committee. REA spokesmen, testifying at the House Interstate and Foreign Commerce Committee's hearings on the Poage Bill (HR 1742), urged the passage of that bill as a step in "carrying forward the rural electrification program in an orderly and efficient manner." The Poage measure, with its provision of $585,000,000 for an REA lending program over a period of three years, was the first lump-sum appropriation sought by the agency.

However, hearings on the bill dragged on almost to the end of the year. During their course considerable opposition to the measure developed, based principally upon testimony to the effect that REA was receiving all the funds it needed

through regular appropriations. The hearings finally closed, but the committee delayed its report.

Now it appears that REA may soon be in a position to forget the Poage Bill. Congress already has given the agency $200,000,000 this year, and the additional $100,000,000 authorization is "in the works." For the coming fiscal year President Truman's budget allots $250,000,000 for electrification loans. Thus, if the last two amounts are accepted by Congress, REA will have gained a total of $550,000,000 for loans in a 2-year period, as compared with the $585,000,000 which the Poage Bill would have spread over three years. Only serious loss, from REA's viewpoint, would be the principle of lump-sum appropriations, which it probably still desires.

ENGINEERS representing the central Indian government and the provincial government of the state of Mysore this month are visiting REA headquarters in Washington and several REA-financed coöperatives. Purpose of the tour is to permit the visitors to study the organization and operation of REA rural electric systems.

Two members of the Indian delegation also will visit the Pacific Northwest to observe public power developments in that area. The entire group has completed a tour of electrical manufacturing plants and laboratories with a view to studying American methods of production and new equipment.

REA has announced plans to resume its Latin-American engineer training program. Under this program, which was inaugurated in 1941 and temporarily suspended during the war, 28 engineers from 15 Latin-American countries attended year-long rural electrification courses conducted by REA. Plans are now being completed to receive another Latin-American group during 1946.

In addition to countries represented in the Latin-American training program, REA has had official visitors from Iceland, New Zealand, Australia, and Canada.

St. Lawrence Development Held Vital to New York

DEVELOPMENT of hydroelectric features of the St. Lawrence seaway project is vitally important to New York state industries, according to the recent annual report of the New York Power Authority to the state legislature. Therefore, the report continued, the authority will offer "constructive and affirmative" proposals at hearings now being conducted on the project before a subcommittee of the Senate Foreign Relations Committee.

The report said that both hydro capacity and generation of electric energy by hydro plants had increased at a much greater rate in the United States as a whole during recent years than in New York state. Authority estimates indicated that at the end of 1944 the state had less hydro capacity than at the end of 1940. The report continued:

> Postwar programs to install more steam capacity in the state were announced by several New York utilities after VJ-Day. Unless the St. Lawrence project is permitted to go forward by prompt approval of the pending United States-Canadian agreement, New York state will have no low-cost hydroelectric power scheduled for development during the postwar period.

Lack of cheap power, the authority contended, caused the closing of the $20,000,000 Plangor aluminum plant at Massena. Situated near the enormous potential power resources of the St. Lawrence, the report added, the plant was forced to depend upon costly power generated by coal at distant coal-burning steam plants. From the turn of the century until the first World War, the report said, all the aluminum made in the United States was produced in New York state at Niagara Falls and Massena. Today the state has only 11.5 per cent of the total aluminum capacity of the country considered adaptable for postwar use, due chiefly to the competition offered by other sections of the country in which low-cost power is available, the authority declared.

A few days after the report was submitted by the authority, its chairman,

James C. Bonbright of New York city, announced his resignation. Mr. Bonbright had been a member of the power agency since its creation in 1931. His letter of resignation to Governor Dewey explained that he wished to retire because of "pressure to accept other commitments."

Major General Francis B. Wilby, retired Corps of Engineers officer, has been named by Governor Dewey to succeed Mr. Bonbright. During his 40-year Army career General Wilby supervised construction of power, irrigation, flood-control, and navigation projects in various sections of the country. A former superintendent of the United States Military Academy, he was commanding general at Fort Belvoir, Virginia, until his retirement last January 31st.

Idaho Water Users Opposed To CVA

PRACTICALLY all of Idaho's water users are opposed to proposed legislation to establish a Columbia Valley Authority, according to a recent statement by N. V. Sharp, president of the Idaho Reclamation Association.

The Columbia Valley Authority proposal has been discussed "in almost every grange hall, commercial club, civic organization, and water users' organization, at least in southern Idaho," Sharp asserted. He added:

> All these organizations, so far as I know, have gone on record strongly opposing all such legislation.
>
> Under the pending measures all water authority is taken away from the state. We do not say that a farmer would lose his water rights, but it is entirely possible under the broad powers delegated in these "authority" bills.

Sharp's statement was issued following a report from CVA proponents that the reclamation association was actuated by "selfish interests" in its opposition to the authority project. This charge was disposed of by Sharp with the following declaration:

> The Idaho State Reclamation Association is an organization to facilitate orderly development of the land and water resources of Idaho, to safeguard their rights. The membership is composed mainly of the canal companies and irrigation districts of the state.

Meanwhile Congress delayed action on the CVA bills (S 1716 and HR 5083) introduced by Senator Hugh Mitchell and Representative Henry M. Jackson, both Democrats of Washington state. Congressman Jackson himself was responsible for the inaction upon the House measure, having appeared before the Rivers and Harbors Committee with a request to delay consideration of the bill. Nor has Senator Mitchell pressed the Senate Commerce Committee for action on S 1716.

Opponents of the CVA measures in the capital are convinced that President Truman now favors the continued development of the Columbia basin area by the Bureau of Reclamation and the Army's Corps of Engineers, as opposed to the proposed valley authority method. This view was supported, they contend, by the following passage from the President's recent budget message:

> Through the use of the waters of the Columbia river, for example, we are creating a rich agricultural area as large as the state of Delaware. At the same time, we are producing power at Grand Coulee and at Bonneville which played a mighty part in winning the war and which will found a great peacetime industry in the Northwest.

It is claimed that Mr. Truman thus clearly expressed his satisfaction with the work of the agencies now operating in the Northwest.

Bonneville Rates Defended

BONNEVILLE POWER ADMINISTRATION'S electric power rate of $17.50 per kilowatt year should not be changed, either upward or downward, it was argued at a recent meeting of the Washington State Reclamation Association at Spokane, Washington.

The rate discussion developed from reports of increased agitation by public power advocates for cheaper electricity

in the Columbia basin area, directors of the association said. Such demands, they declared, are jeopardizing the completion of the Columbia river project and threatening the future of irrigation in the area.

Reclamation experts declared that if rates are reduced below the schedule now fixed by the Bonneville administration for Grand Coulee power, other reclamation projects in the basin will be rendered unfeasible, since none could produce power as cheaply as Grand Coulee. At the same time, they added, lower power rates might seriously reduce the subsidy required to complete reclamation features of the projects. "It is a question of whether we are going to have rock-bottom power rates or subsidized irrigation," one speaker declared.

Higher rates for Bonneville power might hinder industrial development in the area, J. A. Weber, vice president of the association, reported. He expressed the opinion that the Columbia basin project could succeed at the $17.50 rate, and said that he would oppose either raising or lowering it.

It was agreed that, with the general rise in costs, a lower power rate would not be justified at present. Directors of the association closed the discussion with the decision to make a thorough study of the rate question before taking a position for or against a reduction, however.

Bonneville Administrator Paul J. Raver also defended the $17.50 wholesale rate in a recent report to Representative Walt Horan (Republican, Washington). Based on an audit by an independent accounting firm, the present Bonneville rates will provide power revenues totaling $1,863,000,000 over the 50-year repayment period, Dr. Raver said. This amount represents 93.07 per cent of the total funds required to repay reimbursable construction costs and operating expenses.

Co-op Sales Cause Stir

WHILE keeping one eye on its legislative interests in Washington, REA has turned the other—with some apprehension—toward Idaho and neighboring states across the continent. Cause of its concern in this quarter was the recent decision of the Long Valley Power Coöperative, Inc., of Donnelly, Idaho, to sell its system to the Idaho Power Company.

The sale will be the second within a few months of an REA-financed power system to the same company. Last November members of the Jordan Valley Electric Coöperative, Inc., of eastern Oregon, voted to sell their property to Idaho Power. The company took over this system a few days later, serving its customers at rates approximately 30 per cent lower than those charged by the co-op.

Late in January REA sent a member of its Washington legal staff and several field representatives to a special conference of nine rural coöperatives at Boise, Idaho. Representatives of the Bonneville Power Administration and the regional staff of the Bureau of Reclamation also attended the session.

A Bonneville power official told the coöperative delegates that his agency was planning to extend its transmission system to northern Idaho, making cheap Bonneville power available to coöperatives in that area. A Reclamation Bureau engineer stated that dams being built and under study by the bureau along the Snake river would make public power at comparable rates available in southern areas of the state. The REA solicitor urged the group to "resist power company offers," adding that "Idaho is on the threshold of a new economy that will come into being when new public power is made available."

Three days later members of the Long Valley co-op met at Donnelly and, after listening to talks by representatives of the same three government power agencies, voted to sell their system. The vote was 273 to 5.

Terms of the sale are reported to involve a total outlay of approximately $200,000 by Idaho Power Company, including funds to cover the coöperative's loan from REA, refunds of co-op membership fees, and consumer deposits.

Wire and Wireless Communication

THE world's communications capital approached normal operation on February 10th for the first time in five weeks, following settlement of the strike of 7,000 Western Union telegraph workers in New York city.

The transatlantic radio and cable companies, in which operators had been refusing to handle 40 per cent of the usual volume of messages as a strike-support gesture, were the first to return to a normal basis. Even before the first Western Union strikers were to go back to work at 12.01 AM February 11th, the union stewards at the cable offices instructed their members to lift all restrictions and handle press, commercial, and personal messages without delay.

To signalize the arrival of the initial group of returning strikers at the main offices of Western Union at 60 Hudson street, the American Communications Association, CIO, arranged a brief sidewalk rally, at which Joseph P. Selly, union president, and other officers were scheduled to speak shortly before midnight. The union sound truck, which had been blaring forth exhortations to pickets since the strike began on January 8th, was not included in the program.

Meanwhile, Abraham L. Pomerantz, corporation lawyer, who was designated by Supreme Court Justice Aaron J. Levy to arbitrate a disputed clause in the National War Labor Board decision that led to the strike, announced that he would meet on February 11th with attorneys for the company and the union.

The principal point to be decided by Mr. Pomerantz was whether the NWLB, which went out of existence a few hours after rendering its decision, intended to provide wage increases for a group of between 1,100 and 2,000 New York workers, and, if so, how much of an increase they are entitled to receive. The arbitrator said he would do everything to expedite his handling of the case.

A UNION spokesman said the results of the arbitration would prove that the Western Union workers had won "a clear-cut victory" as a result of their strike. The company retorted that the union had gained nothing that had not been available to it without a strike. It estimated the loss in wages to workers at $1,500,000 to $2,000,000.

Between 4,000 and 5,000 of the strikers were due to resume their duties between 6 and 10 AM on February 11th. This group included operators, messengers, clerks, and maintenance men. The company maintained that it had been receiving and transmitting about one-third of the customary volume of messages in the closing days of the strike, but most branch offices were closed and messenger service was at a standstill throughout the walkout.

Company officials said it was impossible to forecast how many of the messengers had obtained other employment and would not return to Western Union. They felt most of the other employees would return.

The union announced that it was still raising funds to aid the Western Union workers, who would not receive their first pay checks for more than a week. Lawrence Kammet, the union's public relations director, said a contribution of $5,000 had been received on February 10th from the CIO Strike Support Committee, and $250 more from the Bakery and Confectionery Workers Union, AFL, bringing the total contributed to date to more than $80,000.

* * * *

WAGE negotiations between the Western Electric Company and the Association of Communications Equipment Workers were broken off on February 7th, raising the threat of a new interruption of telephone service, similar to that which accompanied a 5-day strike by the independent union last month.

Despite the collapse of the wage talks, which had been carried on intermittently for ten months, there was said to be little prospect of a new strike by the 8,000 Western Electric installation workers before February 17th, when the council of the National Federation of Telephone Workers, parent union of the ACEW, was scheduled to meet in Memphis.

Glenn C. Thornton, vice president of the installation union, said the best offer made so far by the company was "unbearable and unlivable," and that the outlook for approval by the union's directors and general membership was unfavorable. The company's proposal was to be put before the directors, representing the union's 15 locals in 43 states, by telephone February 12th, Mr. Thornton said.

The company, according to the union leaders, offered a general wage increase of 15 per cent, with 5 cents an hour to be added to this for workers employed less than eight years, and 7 cents for those having over eight years of service. Mr. Thornton said the union was dissatisfied with the manner in which it was proposed that this increase be applied to a wage progression plan.

A spokesman for the company said it felt it had "reached the limit of its liberality," but that it would welcome an opportunity to resume negotiations in an effort to reach a settlement.

* * * *

THE Federal Communications Commission announced in Washington on February 7th that it had ordered an investigation into the Western Union Telegraph Company's method of delivering telegrams in New York since its offices were hit in that city by a strike of 7,000 employees on January 8th.

The FCC ordered the investigation, its statement said, as a result of "complaints that the Western Union Telegraph Company has been and is now following practices of delivering by mail and by telephone to unauthorized third persons other than the addressee, telegrams destined to addressees in the city of New York."

The union whose members were on strike asked the FCC to intervene on January 19th, complaining against the company's use of the mails to deliver telegrams.

Stating that these alleged practices might violate the Federal Communications Act, the FCC ordered a hearing in Washington on February 18th to consider the union's complaints. The company was ordered to appear and show cause why it should not be required to stop the alleged delivery practices.

Informed of the FCC's action, George P. Oslin, a publicity director of the company, said that the company had been expecting the investigation for some time and was prepared to show that it was not violating the Communications Act. Mr. Oslin said he could not understand what the FCC meant by "delivery by mail and by telephone to unauthorized third persons other than the addressee."

The practice during the strike, he said, had been to try getting the message to the addressee first by private wire, if he had one, next by telephone, and finally by special delivery mail. But, he added, he did not understand "how a message could be delivered to a third unauthorized person."

A detail of 750 New York city police-

men on February 7th was sent to the West Broadway entrance of Western Union's main office, after police headquarters received reports that between 2,500 and 3,000 pickets would assemble there. However, by 8 AM there were only about 30 pickets at the building. As the morning continued, the picket lines gradually increased as the police detail was whittled down. By 10.30 AM only 250 police remained at the scene, while the picket line had swollen to 400 persons. Police would not indicate where they got the report of the proposed demonstration, and union officials said they knew of no such plans.

* * * *

INVITATIONS to join the American Federation of Labor or Congress of Industrial Organizations recently were reported being studied in Washington, D. C., by a 4-man committee of the National Federation of Telephone Workers, one of the largest independent unions in the country.

The NFTW is a federation of five groups of subsidiary unions, all employed in the telephone industry.

Negotiations for joining AFL or CIO have been under way for months. Before the United Mine Workers rejoined the AFL last month, negotiations were started for joining UMW in a third nation-wide labor federation. A committee from UMW met with the telephone workers in Washington on February 6th in accordance with these earlier plans.

The telephone representatives were Richard W. Long, Chicago; William A. Smallwood, Atlanta, Georgia; Ray Waldkoetter, Indianapolis, Indiana; and Miss Ruth Wiencek of Washington. They were to report recommendations to the directors of NFTW at Memphis, Tennessee, February 17th.

The Memphis meeting was called primarily to consider the nation-wide strike called in Washington, D. C., January 13th. This was later canceled to permit member unions to file 30-day notices, as required by law.

Since then several affiliated unions, including the Washington plant and office workers, have signed new contracts with employers. As a result an NFTW spokesman recently declared that the nation-wide strike was now "about out of the picture." Almost half the membership is covered by these new agreements.

The Washington operators who tied up telephone service in that city for eight days in January in protest against what they called "sweat-shop" working conditions, were also reported nearing a settlement of their demands for a $10 a week pay raise.

* * * *

ADJUSTMENTS totaling more than $23,000 would be made in the telephone bills of Milwaukee subscribers as the result of a work stoppage which curtailed service for two days, it was reported recently.

American Telephone and Telegraph Company officials said this was the first such instance of which they had been informed. When service is interrupted, they said, the local company decides whether to make a rebate. The Bell system's policy, they added, is to make refunds when service is curtailed for any length of time.

* * * *

THE Federal Communications Commission in Washington, D. C., last month declined to augment the channels assigned to frequency modulation (FM) broadcasting. The commission denied petitions by the Zenith Radio Corporation of Chicago and the General Electric Company to retain the 44- to 50-megacycle band to supplement the FM assignment of 88 to 108 megacycles, ordered last year. FM still is operating on the 44—50 band, which has been allocated as an additional television band.

FM stations were ordered to begin programming on the upper band of 88—108 on January 1, 1946. WGNB, WGN's sister FM station, on that date began operating on 98.9, its new frequency, as well as continuing on its old wave length of 45.9. This dual operation is required because sets incorporat-

ing the new band are not as yet available.

Zenith based its plea on the ground that the higher band would not provide adequate service to rural areas. At recent hearings Zenith entered measurements made by its engineers on the 50-to-100-megacycle band at Deerfield, and by commission engineers at Andalusia, Pennsylvania, as evidence that the commission had erred in moving FM upward. The shift upward was ordered by the FCC on the theory that FM transmission would be less subject to interference around 100 megacycles.

"The FCC has crippled FM by shackling it to the 100-megacycle band," said E. F. McDonald, Jr., president of Zenith, after learning of the decision. "This means that the farmer and small-town dweller will be deprived of the static-free FM service they need so badly and to which they are entitled."

McDonald said the FM band shift was ordered last June on the basis of one man's theory and against the recommendation of seven other qualified experts and the entire radio manufacturing industry. At that time the FCC had little factual evidence to guide it, he said, but since then tests conducted by Zenith at the FCC's request have shown that stations in the 100-megacycle area cover only 40 per cent of the area that can be covered by a station of equal power and antenna height on the 50-megacycle band.

McDONALD said the FCC's refusal to heed the new evidence would make obsolete nearly a half-million sets now owned by the public. McDonald recalled that Paul Porter, chairman of the FCC, as attorney for the Columbia Broadcasting System in 1940, had recommended that television be given preference over FM. He said:

> It is universally conceded that the farmer cannot have television, so why deprive him of FM also?
>
> Nobody can profit by this decision except the networks which suggested that FM be moved from the 50-megacycle band and some radio manufacturers who are now tooled up for production of 100-megacycle sets.
>
> These manufacturers fear they might lose the profits of the few weeks it would take them to retool for 2-band operations. Denial of FM to the farmer and obsolescence of FM sets have made this a public problem which should be considered by Congress.

* * * *

TELEVISION as an advertising medium has a "niche all its own" and can exist without replacing other media, J. R. Poppele, president of the Televisions Broadcasters Association, Inc., said recently at a luncheon of the New York chapter of the American Marketing Association in the Commodore hotel, New York city.

Mr. Poppele said he recalled the "trepidation and carpet chewing" that went on among newspaper publishers and magazine "tycoons" when radio caught on as a commercial art during the middle 1920's, and asked rhetorically:

> Have you seen the circulation figures of our leading dailies and weekly or monthly magazines lately? Radio is twenty-five years old and still the circulations of magazines and newspapers just grow and grow. Why should television cause these bigwigs to cower in view of their experience with radio?

Mr. Poppele, a vice president, secretary, and chief engineer of Bamberger Broadcasting Service, Inc., issued a warning, however, to anyone who might try to "pour cold water" on television's advance. "They are likely to find a strong undertow knocking them off their pins," he declared, "but those who take it in stride and seek to fit it into the present order will find that it has a niche all its own and will operate successfully in its sphere."

The television executive gave the impression that the new industry might be more of a threat to radio than to other media. Declaring that radio commercials requiring vivid visualization would find television a more "forceful medium," he said that radio eventually would have to rely on new methods and approaches.

A good deal of the fear aroused by the imminence of television, he continued, is due in measure to its potential being overemphasized while it is still unborn commercially.

Financial News and Comment

By OWEN ELY

Private Enterprise System Threatened

THE inflationary psychology of the stock market has obscured the current dangerous decline in corporation profits. Philip Morris recently canceled some important financing because of the sudden sharp shrinkage in earnings, and Dresser Industries passed its dividend just after a special offering of its stock had been made. Ford reports that he is losing a large amount on each car produced. Yet the administration is pressing its program to raise wages substantially over prewar rates, with only small offsetting price advances when necessary to settle strikes. According to *The Wall Street Journal*, the wage-price policy now being formulated will allow some firms prewar profits, but others only half or less; and another headline says "Further Profits Squeeze Seen Resulting from New Job for Bowles."

Unfortunately we have statistics on national income (at least in the present form as compiled by the Department of Commerce) only from 1929. The table on page 300 shows that in that year corporations' net income was 9 per cent of national income, and that in recent years, despite tremendous industrial activity resulting from war orders, it has averaged only 6 per cent of national income, or one-third less than in 1929, and about the same as during the period 1936-41.

On the other hand, so-called small business—farmers, storekeepers, partnerships, and other unincorporated enterprises—has enjoyed a rather steady participation in national income, the figure of 16 per cent in recent years being the same as in 1929. During the depression days of the early 1930's small business was able to retain at least 12 per cent of national income, while the corporations were "in the red" to the extent of 9 per cent in 1932. Labor's 1929 share of 64 per cent increased to 79 per cent in 1932 (though the dollar amount in billions declined from 53 to 32). In recent years labor's share had been running at 70 per cent—72 per cent of national income compared with about 68 per cent in the period 1935-41.

LABOR, corporations, and small business, have all benefited at the expense of the banks, insurance companies, bondholders, and landlords. The proportion of the national income going to landlords and holders of bonds has declined from a 1929 and prewar level around 11 per cent to the present figure of 7 per cent, and this may be whittled down further by the present rapid decline in interest rates (discussed on page 300 of this department).

The present trend is to penalize the security holder, in order to give a still bigger proportion of the national income to labor. Interest rates are being forced downward, reducing the income of savings banks' depositors, insurance policyholders, and individual bondholders. Stockholders are hit by double taxation, by the heavy restrictions on corporate profits, and by the tendency of corporations to reinvest a larger proportion of the earnings in the business. Thus in 1929 stockholders received nearly $6,000,000,000 out of national income of over $83,000,000,000 (about 7 per cent), while in 1945 they received an estimated $4,500,000,000 out of a national income

of over $160,000,000,000, or only about 2.8 per cent of the total. Taking into account the big increase in tax rates since 1929, it is obvious that stockholders are now getting an even smaller proportion of national income than the 2.8 per cent estimated for 1945.

The result of this trend is the further concentration of power in unions and the Federal government. This is seen in the effort to guarantee full employment through government spending and "directives" to business, in the encouraging of interference by labor in corporate management, in the incessant pressure against profits, and the disregard of views expressed by business leaders. Former President Hoover, in his recent Lincoln day talk, declared that both major parties had "straddled" the dominant issue before the American people—the issue of "free men against the tide of statism which is sweeping three-quarters of the world." The question whether our American business system is to be maintained on an independent basis, or gradually absorbed by the unions and the Federal government, may well furnish the dominant issue in 1948.

Will Interest Rates Continue to Decline?

DURING 1946 bond and preferred stock prices have continued to advance until the great majority of issues (including many securities issued only a few months ago) are selling above their call prices. In fact a bond or preferred stock with investment merit and reasonable yield selling below its call price has become almost a rarity, and the market supply of many issues seems to have dried up completely.

All this appears to be largely the result of the administration's avowed policy of "easy money." Both Washington and London find it easier to finance their huge debts by keeping interest rates at the lowest possible level. With the Bank of England in process of nationalization, and with Washington retaining a dominant rôle in our banking system through Federal Reserve and other channels, it is generally assumed that low money rates are here to stay—or at least for some time to come.

However, recent indications that Secretary of the Treasury Vinson may cut

PROPORTION OF NATIONAL INCOME ASSIGNED TO LABOR, "SMALL BUSINESS," CORPORATIONS, ETC.

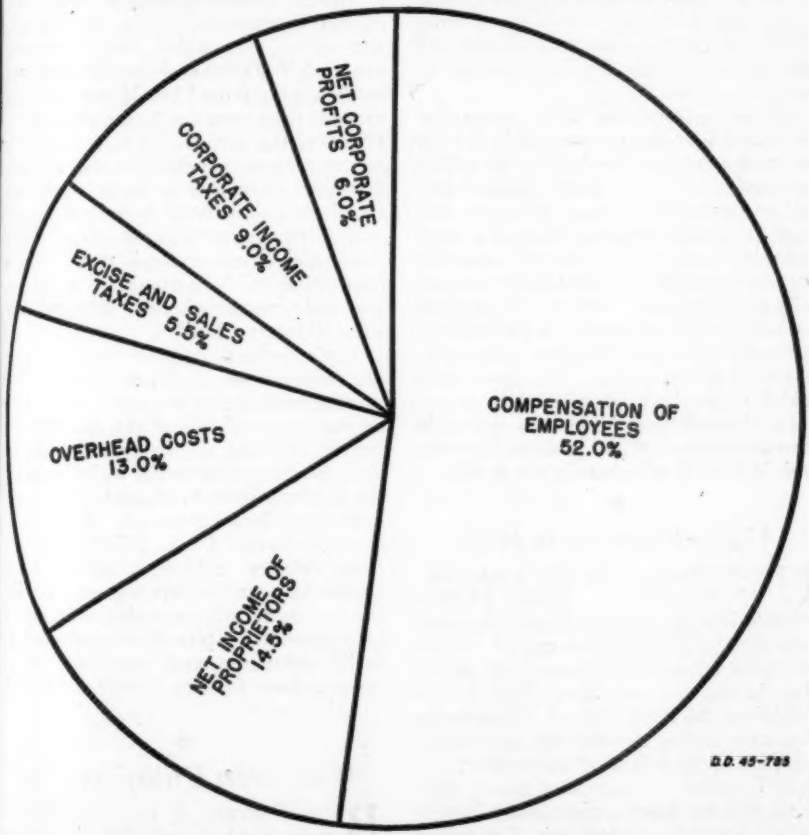
Year	*Workers' Share*[1]	*"Small Business"*[2]	*"Big Business"*[3]	*Interest, Net Rents, Etc.*
1929	64%	16%	9%	11%
1930	70	15	2	13
1931	75	13	D3	15
1932	79	12	D9	18
1933	70	15	D1	16
1934	70	15	1	14
1935	67	17	3	13
1936	66	17	6	11
1937	68	17	5	10
1938	70	16	3	11
1939	68	16	6	10
1940	67	16	7	10
1941	68	16	8	8
1942	70	17	6	7
1943	71	16	6	7
1944	72	15	6	7
1945 estimated	71	16	6	7

[1] Total wages, salaries, work relief, etc.
[2] "Proprietors' net income" (farmers, unincorporated business, etc.).
[3] Corporations' net income.

rates somewhat further in the pending March 15th finance program have led to considerable opposition on the part of insurance and commercial banking representatives and spokesmen for the Federal Reserve System. The insurance companies are being steadily "squeezed" by the constant turnover in their portfolios resulting from the refunding of old issues. Madison Gas & Electric bonds were recently sold on a 2.39 per cent basis and Union Pacific debentures were offered on a 2.47 per cent basis and went to a premium. Victory Loan 2½s now yield only about 2¼ per cent to first call date.

DURING the war the increase in government debt was financed about 55 per cent through individual purchases and about 45 per cent through the banking system, the latter being considered an inflationary factor because it results in

Distributive Shares of Private Production, 1944



TOTAL PRIVATE PRODUCTION, $169 BILLION

Source: U. S. Department of Commerce.
From The Survey of Current Business.

increased bank credit (eventually transferred from the government to individuals or corporations). Commercial banks alone hold about 30 per cent of the government's debt, largely in short-term paper paying three-eighths to seven-eighths per cent interest. But the banks prefer 10-year 2s to the short-term paper, and this preference is the principal reason for the sharp advance in bond prices. A solution would be to issue more long-term paper and cut down on the bills and certificates, but this would raise the over-all interest burden of the Treasury. Meanwhile, the rise in bonds and preferred stocks is driving funds into the common stock market and helping to sustain the bull market in equities.

While the trend may be dangerous for the national economy as a whole, it is at any rate a current blessing for the utility companies, with their heavy bonded debt and preferred stock issues. While tax savings on premium charge-offs will be considerably lower under the new law, the present decline in interest rates to around a 2½ per cent basis, and to a 3½ per cent basis for preferred stocks, is a golden opportunity to repeat the refunding program of recent years. The speed with which it can be accomplished is apparently dependent only on the available time and energy of the bankers, lawyers, and SEC staff who handle the work.

Utility Financing in 1945

UTILITY financing in 1945 totaled $2,371,582,779, of which $2,264,599,647 was for refunding purposes, and only $106,983,132 for new capital. While the latter figure was substantially higher than in the two preceding years, it was far below the 1941-42 level. Despite the fact that during the war the generating capacity of the private electric power and light industry has increased nearly one-fifth, this has been accomplished largely by construction of plant out of earnings and depreciation funds.

In 1945, the trend towards stock financing showed some increase, but stock issues still amounted to only $178,834,779 (or about 8 per cent of the total). Less than one-seventh of the preferred and common stock issues was for "new money." Virtually all financing was in the form of preferred stocks; such common stock financing as appeared during the year represented principally the sale of items in holding company portfolios.

Private utility financing—issues placed directly with institutions—is estimated at $507,000,000 for 1945, or about one-fifth of the total.

The utilities are making increasing use of bank borrowing. Since last October, six utility companies have borrowed nearly $200,000,000 from the banks at rates ranging from 1½ to 2½ per cent. This move is doubtless due to the changed attitude of the banks. Up to a few years ago they were reluctant to extend loans for more than two or three years, but the dearth of private financing has resulted in longer-term paper. Many utility companies have arranged such loans in connection with refunding programs, thus reducing their bonded debt and their over-all interest burden.

With respect to preferred stocks, a new method has developed of organizing management-dealer groups to stimulate an exchange of old stocks for new by individual holders. In many cases no underwriting is involved, while in others the bankers have a "stand-by" arrangement to underwrite the sale of the unexchanged shares. In the $33,000,000 Alabama Power exchange deal, several groups bid for the privilege of handling the exchange, compensation including a management fee plus share commissions (with minimum and maximum dollar commissions for the holdings of each stockholder).

Wall Street Utility Analyses

BEAR, STEARNS & Co. has issued a memorandum on Illinois Power Company, supplementing a more complete report prepared early last year.

Josephthal & Co. has issued a study

on Engineers Public Service, with a conclusion as follows:

"Under a liquidation plan which has been filed with the SEC contingent upon a decision by the Supreme Court upholding the constitutionality of the Holding Company Act, the present common stock would ultimately receive new securities and rights which we estimate would have an aggregate value of more than $50 a share."

The value of El Paso Electric is estimated at $11,000,000, Virginia Electric is appraised at $77,000,000, and Gulf States Utilities rights at $12,000,000, making a total equity of $100,000,000.

Hirsch & Co. has issued a review of business and financial conditions containing a lengthy analysis of the outlook for public utilities. The author, Mr. Ahmed, states: "A survey of some 30 large utilities showed that most of these companies earned on the average 5½ per cent on their plant, while some earned less than 5 per cent. On the basis of this sample it is believed many companies will be allowed to show increased earnings without being subject to severe rate cuts. As has been demonstrated, however, reduced rates have often been followed by increased consumption and profits." He also pointed out that the dividend record for utility stocks is much more favorable than for industrial and railroad equities. During the period 1929-40, distribution on utility stocks never fell below 62 per cent of the peak-year payments, while dividends on industrial and rail stocks dropped to 29 per cent and 14 per cent, respectively, of the peak-year payments.

Baker, Weeks & Harden has issued a study on Electric Power & Light common stock.

Expansion under Way

THE expansion program of Kansas-Nebraska Gas Company, traded over the counter, is well under way, and plans to increase its outlets to some 28 communities in Kansas and Nebraska were announced recently in the annual report to stockholders. The utility intends to complete this year the necessary additions to its pipe-line system, so that thereafter it will be in a position to obtain substantially all its gas from the large Hugoton natural gas fields in southwestern Kansas for transmission to the 95 communities now served by the company. To finance the program, which will cost about $2,150,000, the company proposes to sell $1,100,000 of 3⅜ per cent bonds and 5,500 shares of preferred. Proceeds from the securities will amount to about $1,700,000; the remainder of the funds will come from working capital.

The company has outstanding 341,952 shares of common, compared with 293,952 shares at the end of 1944. During 1945, 48,770 shares were issued as a stock dividend.

ELECTRIC-GAS OPERATING COMPANY STOCKS

	Where Traded	*Price About*	*Div. Rate*	*Yield About*	*Share Earn.† 12 Mos.*	*Amt.*	*Price-Earn. Ratio*
Arizona Edison	O	19	$ .90	4.8%	Sept.	$1.71	11.1
Arkansas-Missouri Power	O	17	.60	3.5	Sept.	1.24	13.7
Beverly Gas & Elec. Co.	O	55	2.80	5.1	Dec. '44	2.41	22.8
Black Hills Power & Light	O	26	1.20	4.6	Oct.	1.90	13.7
Boston Edison	B	47	2.00	4.3	Sept.	2.27	20.8
Brockton Edison Co.	O	43	2.00	4.7	Dec. '44	2.10	20.5
Calif. Electric Power	C	13	.60	4.6	Nov.	1.04	12.5
Central Ariz. L. & P.	O	13	.70(a)	4.6	Nov.	.95	13.7
Central Hudson G. & E.	S	13	.48	3.7	Sept.	.56	23.2
Central Ill. E. & G.	O	29	1.30	4.5	Sept.	1.86	15.6
Central Vermont P. S.	O	23	1.08	4.7	Oct.	1.69	13.6
Cleveland Elec. Illum.	C	46	2.00	4.4	Sept.	1.95	23.7
Commonwealth Edison	S	33	1.40	4.3	Sept.	1.80	18.4

(*Continued*)	*Where Traded*	*Price About*	*Div. Rate*	*Yield About*	*Share Earn.† 12 Mos.*	*Amt.*	*Price-Earn. Ratio*
Community Public Service	O	37	2.00	5.4	Sept.	2.71	13.6
Concord Elec. Co.	O	47	2.40	5.1	Dec. '44	2.46	19.1
Connecticut Light & Power	O	70	2.70	3.9	Nov.	2.86	24.5
Connecticut Power	O	56	2.25	4.0	Dec. '44	2.33	24.0
Consolidated Edison N. Y.	S	35	1.60	4.6	Dec.	1.74	20.1
Consolidated Gas (Balt.)	C	87	3.60	4.2	Dec.	4.41	19.8
Delaware Power & Light	O	24	1.00	4.2	Sept.	1.20	20.0
Derby Gas & Electric	O	27	1.40	5.2	Dec. '44	1.40	19.3
Detroit Edison	S	27	1.20	4.5	Nov.	1.08	25.0
Duke Power	C	103	4.00	3.9	Dec. '44	4.75	21.7
Empire Dist. Elec.	O	21	1.12	5.4	Sept.	1.71	12.3
Fall River Elec. Lt.	O	58	2.60	4.5	Sept.	2.98	19.5
Fitchburg G. & E.	O	53	2.50	4.7	Dec. '44	2.44	21.7
Florida Power Corp.	S	18	.80	4.5	July	1.02	17.6
Hartford Elec. Light	C	72	2.75(b)	3.8	Dec.	3.29	21.9
Holyoke Wtr. Power Co.	O	22	1.05	4.8	Sept.	1.36	16.2
Houston Lighting	S	89	3.60	4.0	Nov.	4.64	19.2
Idaho Power	S	42	1.60	3.8	Dec.	2.92	14.4
Indianapolis P. & Lt.	S	29	1.20	4.1	Sept.	1.90	15.2
Iowa Public Service	O	18	.40	2.2	Nov.	.72	25.0
Lake Superior Dist. Pr.	O	27	1.10(c)	4.1	Sept.	1.73	15.6
Lawrence Gas & Elec.	O	41	2.15	5.3	Sept.	2.28	18.0
Lowell Elec. Lt. Co.	O	52	2.30	4.4	Sept.	2.33	22.3
Lynn Gas & Elec.	O	102	5.00	4.9	Dec.	4.84	21.2
Michigan Public Service	O	23	1.00	4.4	Sept.	2.06	11.2
Missouri Public Service	C	30	.60	2.0	Dec.	2.90*	10.4
Missouri Utilities	O	19	1.00	5.3	Dec.	1.28	14.9
Montana-Dakota Utilities	C	13	.60	4.6	Sept.	.95	13.7
Mountain States Power	C	32	1.50	4.7	Nov.	2.10	15.3
New Bedford Gas & Elec. Lt.	O	80	4.00	5.0	Sept.	4.81	16.7
New Orleans Pub. Service	O	36	1.40	3.9	Nov.	2.14	16.8
Newport Elec.	O	31	1.60	5.2	Dec.	2.06	15.1
Pacific G. & E.	S	45	2.00	4.5	Sept.	2.17	20.8
Penn. Water & Power	C	84	4.00	4.8	Sept.	4.97	16.9
Phila. Elec.	S	29	1.20	4.2	Sept.	1.59	18.3
Pub. Ser. of Colorado	S	37	1.65	4.5	Dec.	2.53	14.6
Pub. Ser. of Indiana	O	36	1.00	2.8	Sept.	1.92	18.6
Puget Sound Pr. & Lt.	O	16	1.20	7.5	Nov.	1.62	9.9
Rockland Light & Power	O	11	.50	4.5	Dec. '44	.56	19.7
San Diego Gas & Electric	O	18	.80	4.5	Nov.	.90	20.0
Sierra Pacific Power	O	28	1.40	5.0	Dec.	1.59	17.6
Sioux City Gas & Elec.	O	30	1.30(d)	4.3	Oct.	2.76	10.9
Southern Calif. Edison	S	37	1.50	4.1	Sept.	1.72	21.5
Southwestern Elec. Service	O	13	—	—	Feb.	1.09	12.0
Southwestern Pub. Service	O	36	1.20	3.3	Nov.	1.90**	19.0
Tampa Electric	C	34	1.60	4.7	Dec.	1.99	17.1
United Illum.	O	52	2.00	3.9	Dec. '44	2.14	24.3
West Penn Power	O	27	1.20	4.5	Sept.	1.25	21.7
Western Mass. Cos.	O	37	1.65	4.5	Sept.	2.86	13.0
Wisconsin Elec. Power	O	19	.68	3.6	Sept.	.98	19.4
Averages				4.4%			17.8

S—New York Stock Exchange. C—New York Curb Exchange. B—Boston Exchange. O—Over counter.

* Estimated on basis of $2.20 reported for nine months ended September 30th; including operations of Sedalia division since acquired March 26, 1945.

** Not adjusted for separation of properties transferred to Southwestern Electric Service.

† Except where indicated, 1945.

(a) Based on initial dividend of 17½ cents (although previously indicated rate was 60 cents).

(b) Eighty-nine cents paid thus far in 1946, including extra.

(c) Less Wisconsin tax.

(d) Indicated dividend rate on new stock basis.

What Others Think

Stoneman Urges REA-utility Coöperation

At a hearing in October of the subcommittee of the House Committee on Interstate and Foreign Commerce, considering the Poage Bill (HR 1742), E. J. Stoneman, president of the National Rural Electric Coöperative Association, testified in the interests of the members of that group. His appearance followed that of representatives of the electric utility industry at previous hearings. (See, also, page 291.)

After telling in some detail of the relations between the Dairyland Power Coöperative (made up of 24 co-ops in Wisconsin, Iowa, and Minnesota), of which he is also president, and private power companies, Mr. Stoneman agreed with Representative Hinshaw. (Republican, California) that integration of the power systems on both sides is the better plan if it could be made to work. In this connection he expressed approval of the peace offered by "a power executive" (Grover C. Neff, president, Wisconsin Power & Light Company — see article, December 20, 1945, issue, page 811, PUBLIC UTILITIES FORTNIGHTLY). It was his thought in this matter that the private power interests should meet the REA co-ops with no reservations.

During his testimony, Mr. Stoneman disclosed that his Dairyland Power Coöperative has borrowed $11,200,000 from REA since 1930 and has its own generating facilities of 19,000 kilowatts' capacity in which substantial increase is planned. When reasons were suggested why his group should buy from private power companies, Mr. Stoneman intimated that there was danger in letting "someone else" fully control the farmers' sources of electricity.

Another witness before this committee was Clyde T. Ellis, executive manager of the NRECA, who stated that his organization had more than 600,000 members in 45 states. He alleged that these hearings represented the first active organized campaign against REA appropriations by private power interests who, he believed, wished to discredit REA projects, deprive them of adequate funds, and sell Congress the idea of prohibiting use of any future funds for generation and transmission of electricity.

The witness listed 21 states which he claimed would be out of REA funds in sixty days and unable to get any more funds until next June if the measure under consideration failed to pass. Inadequate planning and inability to plan far enough into the future were REA's greatest impediments, he said.

Mr. Ellis went into some detail regarding the fight for business between REA co-ops and private utilities. Representative Hinshaw asked if this example of "dog-eat-dog" competition was used as an accusation against private power interests, pointing out that they often had to protect investments of stockholders on lines already built, as well as other similar investments. The witness expressed the opinion that neither side could be censored too harshly and that the competition was good for the ultimate beneficiary—the public. Representative Hinshaw expressed the belief that such "cut-throat" competition benefits no one and that the inadequate compensation that the winning company got for its services was not good for the company or the public.

In discussing the question of REA co-ops building or buying generating plants to serve their customers, Mr. Ellis declared that those who control the generation of power will always be the winners. He made a plea that it was un-

democratic to have such control in private hands which, he claimed, had abused it in the past.

He added that the interconnection of public and private power lines might be a good idea if peace could be achieved.

REPRESENTATIVE W. R. Poage (Democrat, Texas) also came before this committee considering the bill, of which he was the author. He claimed the witnesses before him had drifted from the purpose of the bill. He said his objective was to give REA a chance to plan on a 3-year basis instead of the 1-year basis that has hampered it so to date. He told of the first REA project in the United States at Bartlett, Texas, and of the competition fights in his area, which he said were a good thing.

Subcommittee members pointed out that the witness' bill entirely disregarded certain provisions of the original REA Act.

He denied this was true as regards essential safeguards in the original act. "And if my bill does violate these safeguards, take out those provisions that do so. Change the language if necessary," he said. He expressed dissatisfaction with the fact that his bill was made such a test of REA policies. He asked why it was not best to pass his bill first and then investigate REA policies and practices.

—R. S. C.

Are TVA Rates "Objectively Conservative"?

IN an article, " 'Heat by Wire' for Tomorrow's Home?" by E. T. Hughes of the Federal Power Commission, published in the August issue of *Public Power*, some interesting views are set forth as to future possibilities in this field of the electric utility business.

In his opening paragraph the author answers the question in the title of his article, by the statement that electricity can be considered for heating the well-insulated home of tomorrow "if the electric industry will accept all-out competition for the residential dollar." He then adds: ". . . the utilities, too, should realize there can be no real plenty unless the good things of life are priced for average incomes." In his opinion, "efforts on the part of electrical manufacturers to provide appliances for the postwar home can be materially handicapped if the electric utilities fail to provide residential rates compatible with the requirements of the all-electric home."

This article discusses various phases of competition—coal, manufactured and natural gas, and fuel oil—in the space-heating field, going into some detail as to heating values of these mediums and their costs for house heating, also the type of electric rates which the author considers would have to be put into effect to meet competition for this class of business.

COMMENT is made by Mr. Hughes upon what he terms the TVA influence:

> . . . whether we like it or not one cannot disregard the long-range national influence of the Tennessee Valley Authority which already has made possible the statement: "Smokeless communities are a reality in subdivisions developed on the edge of Knoxville, Tennessee. . . . Highland Hills 'Knoxville's first smokeless community.' . . . Most of the homes in it are electrically heated and entirely electrically equipped."

It may be that, he adds,

> . . . if private utilities were to adopt residential rates comparable to those promulgated by the Tennessee Valley Authority, such rates would seem unremunerative under some standards of regulation. However, with added liberalized decisions of the courts on regulatory matters combined with the psychological effect of competitive rate reductions such as are being realized by public *versus* private power competition in Seattle, it *is only a matter of time until present Tennessee Valley Authority rates will be nationally accepted as objectively conservative.* Just as the manufactured gas industry adopted house-heating rates, when faced with the loss of prevailing loads to other services, so must the electric industry soon

realize that promotional residential rates below one cent per kilowatt hour are necessary to meet competition with public power. The time seems opportune for the electric utilities to lift the pall of conservation and face the issue with a sense of realism. [Italics added.]

In conclusion, the author states:

... it is well to remember the public as represented by the residential customer proved during the 1932 depression that, besides being a ratepayer, a taxpayer, and a voter, it is also the backbone of the electric utility load.

Both privately and publicly owned electric utilities should promote all-out competition for the residential dollar and debunk the popular conception that rates are based on what the traffic will bear. . . . Objective for complete electric service in "tomorrow's all-electric home," competitive rates for consumption between 1,200 and 6,000 kilowatt hours per year, should approach an average price not above three times production cost per kilowatt hour and not over twice production cost for consumption above 6,000 kilowatt hours.

It would seem that the author's assertion that TVA rates are "objectively conservative" and will be "nationally accepted" may be open to question. The view is rather widely held among informed people that those rates are on a less-than-cost basis. Also there is to be considered the unavoidable obligation laid upon business-managed utilities to pay taxes and interest upon debt. These are charges which in TVA's case amount in reality to almost token payments.

These differences make it difficult to put TVA and the business-managed utilities on a comparable basis. Until they are removed, it would appear that to predict national adoption of TVA rates is a bit optimistic.

EEI President Kellogg Checks the Past And Looks Ahead

In a recent address before the Indiana Electric Association, C. W. Kellogg, president of the Edison Electric Institute, spoke on "The Path Ahead, with a Backward Glance." He reviewed in concrete statements the facts as to how the load was carried and how power requirements for war were forecast by the business-managed electric utilities.

As to the load-carrying accomplishments, Mr. Kellogg stated:

... The figures I am about to give include the whole industry—electric service companies, government and municipals—which in 1944 contributed to the total in the approximate proportion of 82, 14, and 4. From 1939 through 1944 total electric energy sales per annum grew 87.3 per cent. If load factors, reserve margins in per cent, and other ratios existing in 1939 had remained the same throughout the war, it would of course have been necessary to increase generating capacity also 87.3 per cent, or from 40,300,000 to 75,500,000 kilowatts. What actually happened was to increase generating capacity to only 50,300,000 kilowatts. How is this difference explained? (See table printed below.)

1. Starting in 1939 with installed generating capacity of	40,300,000 kw. or	100 %
2. There was added in new generating capacity through 1944 approximately	10,000,000 kw. or	25 %
3. There was saved by higher load factor (resulting from longer hours of operation, metallurgical loads, war time, etc.)	17,000,000 kw. or	42 %
4. There was a draft on spare capacity (on a percentage basis, through greater use of interconnections and shortening maintenance schedules) of approximately	5,000,000 kw. or	12.3%
5. And finally, by cutting down company use and losses in transmission and distribution from 18.6% to 13.8%, there was saved	3,200,000 kw. or	8 %
Thus accounting for the full theoretical need of	75,500,000 kw. or	187.3%

Then, as to power forecasts, the speaker said:

> It might be fitting to attribute this happy result to good luck, for which the electric service companies, which furnished most of the service, were entitled to no particular credit but for two things:
>
> 1st. The lion's share of these economies was specifically predicted by the writer long before the event, and
>
> 2nd. These predictions when made were repudiated and ridiculed by certain government officials, who continued their dire croaking about an impending "power shortage" (which they began way back in 1935), even after the WPB in 1942 had canceled, as not absolutely necessary, orders for 2,200,000 kilowatts of electric generating capacity then in various stages of manufacture or installation.

REFERRING to specific forecasts in his presidential reports from June, 1939, on, Mr. Kellogg pointed out how closely these approximated the actual conditions for the periods under consideration. He added this comment:

> The reason for this somewhat lengthy recital is merely to show for the record that the successful handling of the nation's electric power requirements for the war was not the result of luck but of the application of principles and methods clearly foreseen and clearly enunciated before the war began and in its early stages.

All through this war period, in fact beginning back in 1935, the Federal Power Commission had been announcing its forecasts as to electric power demands and the increased generating capacity which it estimated would be required. To illustrate the commission's record in this estimating business, Mr. Kellogg presented the table below.

With a passing reference to FPC's "unfamiliarity with the business," Mr. Kellogg observed that

> There is a much more important angle to this matter than the mere question of accuracy of estimates. From the viewpoint of the nation, the production of electric generating capacity called for by the prophets of "power shortage" would have been in direct competition with the equipment sorely needed at that time for the production of synthetic rubber, high-octane gasoline, and essential naval construction.

Turning then to what the future may present, the speaker said:

> So much for the look behind. We can take pride in the fact that we were prepared and that we knew our business better than our critics. I have stated what I have merely for the record. . . .
>
> The first effect of the cancellation of war orders has, of course, been a reduction in the consumption of electricity in industry. This need not appall us; it will give an opportunity for the resumption of maintenance schedules disrupted by the long hours of war service.
>
> Beyond that we have before us the great task of filling the ranks of our commercial forces and of training them for the huge sales and development program that lies immediately ahead. . . .
>
> We have the general problems of maintaining and improving the standards of our service, the morale of our organizations, and our relations with our customers, all basic matters calling for our best efforts. The relaxing of the imperative demands of war production should give us more time for the study and research which in the past have led us to constantly greater achievements.

TWO matters of especial moment were referred to in his further remarks—one being the question of intra-atomic energy, regarding which he stated:

> Prominent among matters of future research will be the possible use of intra-atomic energy in the production of our power supply. The relatively enormous amount of this energy compared to the weight of matter involved had been known for some time before the war, but the atomic bomb represented the first time it had been extracted in large quantities and used. Physicists assure us that the rate of release of this energy can be controlled—that it need not necessarily be explosive—but the principles involved are so far beyond the range of previous human

	Peak Predicted in 1941	*Actual Peak*	*Error*
1941	33,944,000 kw.	31,619,000 kw.	2,325,000 kw.
1942	39,615,000 "	32,942,000 "	6,673,000 "
1943	42,732,000 "	37,964,000 "	4,768,000 "
1944	45,038,000 "	37,857,000 "	7,181,000 "

WHAT OTHERS THINK

"WE ALWAYS LET LITTLE RATHBONE DO ALL THE ELECTRIC WIRING AROUND THE HOUSE. WHAT'S WRONG WITH THAT?"

experience that the most thoroughgoing investigation will be required before utilization of atomic energy as a heat source will be practicable. The question of cost is also a fundamental one since after all present fuel costs are only about one-sixth of the total cost of furnishing electric service and so far at least the release of intra-atomic energy has been a very expensive process.

As to the other specific matter—Federal government competition—Mr. Kellogg said:

> It would be ostrichlike to blind ourselves to the most serious competition we have ever encountered in our history; in the entry of the Federal government into the electric service field, armed with the lethal weapons of tax exemption and interest-free Federal funds. In defending ourselves from this attack, we should count as allies the general economic situation and the American sense of fair play.

With reference to the first of these "allies," this comment was made:

> . . . it must surely be dawning on all minds that for our country economy must be the watchword from now on. . . . Not one cent of government credit or of government tax income can be spared for anything not absolutely necessary—least of all for things like water power, which is demonstrably less economical than steam, or for excursions designed for the government to compete with its tax-paying citizens in their business.

Then, considering the second "ally," he said:

> . . . Much stress has properly been laid by our government on the need for rehabilitating the small businessman and for seeing to it that he gets an equal chance with the big fellow to get started again on his own. Surely no one can appreciate more keenly than he the unfairness of his own govern-

ment, which he has created and supports for his own protection, going into competition with him, using the financial power with which he has endowed it to crush him through tax exemption and other subsidies. He can understand what it would mean to him to have a competitor down the street who paid no rent and who didn't have to (as he does) pay interest on money borrowed from the bank to get started.

Mr. Kellogg added the pertinent comment that "there are indications that the government bureaucrats themselves are very sensitive to the unfairness of the tax exemption and freedom from interest they enjoy; and it is incumbent on each of us to drive this point home on all occasions in our public contacts."

IN the closing part of the address considerable attention was devoted to farm electrification — past accomplishments, the present situation, and the well-ordered plans of the business-managed electric companies for providing service in the rural areas. Mr. Kellogg noted:

> It is unfortunate that so much controversy has grown up between the utility companies and the REA, since, so far as the intent is stated in the original REA Act, its purpose is to take electric service to rural customers not otherwise able to get such service. This objective, which we initiated forty-five years ago and which we have followed particularly during the last twenty-two years, is the same as our own. There should therefore be cooperation between the two bodies . . .
>
> What the electric companies can and do justifiably object to is the use of REA appropriations for the construction of unneeded generating plants, the construction of long, duplicating transmission lines, and the acquisition of nonrural business wherein it competes on an unfairly subsidized basis with existing tax-paying enterprises. It is very much to be hoped that the REA will discontinue these policies, which are economically wasteful of both money and effort, and as and when the bringing of electricity to the farms is completed, devote their energies, as we must do also, to the much longer task ahead of building up the use of electricity on the farm so as to help the farmer's earning power. This is an educational job, calling for all our initiative and persistence, which should be profitable alike for purveyor and user of the electric service.

It seems apparent from the various phases of the electric industry's activities—past and prospective, touched upon by Mr. Kellogg in this address—that the business-managed utilities are aware of the opportunities as well as the problems facing them. And, also, that, coupled with this awareness, the industry is alert to meet its obligations and to improve and extend its services in postwar days, with all the foresightedness and energy which it demonstrated it was capable of during the days of war.

—R. S. C.

Big Job on Farms Is to Mechanize the Chores—Electrically

MOST of the 2,700,000 farms hooked up to power lines have electricity but are *not electrified*, says *Farm Journal*. Two years ago REA estimated that only 25 per cent of the wired farms had electric water pumps. Further, the magazine states:

> A hard-working man expends energy at the rate of one-tenth of one horsepower. A one-horsepower electric motor, therefore, will deliver as much work in one hour as a man can do in a 10-hour day. It will do it hour and hour, without getting tired, without stopping for lunch.
>
> The man may cost $4 a day, but the motor, accomplishing the same work in an hour, will work for less than 4 cents (where the power rate is 5 cents per kilowatt hour). That's one one-hundredth of the cost of the man.
>
> Moreover, the longer the motor works, the cheaper its wages become. In many areas, where electricity is doing a *full-time* job on the farm, one-horsepower motors are working for as little as *one cent an hour*. . . . . .
>
> *Yet only 20 per cent of the farms that have electricity use electric motors.*
>
> Electricity will do some 225 jobs on a farm, from sounding alarms to sawing wood, not counting 90 uses in the farm home. Most of these jobs are in barns and other buildings, and around the farmstead, and that is where farmers and their help spend *65 per cent of their working time.*

WHAT OTHERS THINK

Farmers already have made much progress in mechanizing field work. They have just begun to mechanize chores, which take this 65 per cent of their time. Because some chores are done in bits and snatches throughout the day, we don't think much about the possibilities for mechanizing them. Yet when time spent and distance traveled are carefully measured, some startling information is revealed about some of our simplest chores.

Here is an instance:

On the E. R. Seaman farm in Roane county, it took 769 hours a year to pump water by hand. Members of the family walked 124 miles a year carrying 15,042 gallons of water to the house, barn, and chicken house. An electric motor pumped 19,951 gallons of water the next year; nobody carried a drop of water, nor walked a mile to do it.

The pump cost $100; *the cost of electricity was $1.58.*

Electricity thus saved 77 10-hour days for other work, or for leisure.

And this suggests how a farm may really put electric motors to good use:

E. S. Humphrey, of Wood county, West Virginia, keeps enough chickens and raises enough crops so that his farm qualified as a 9-man operation under Selective Service deferment regulations during the war. But four men actually do the work. Electricity takes the place of the other five.

Humphrey uses at least *27 motors* outside his home. They run elevators, pumps, grinders, fans, refrigerators, cooling units, drills, egg graders, potato graders, grain cleaners, air compressors, hoists, potato cutters, and saws.

The pay-off on his use of electricity came last spring, when 40 cents for electric power to run mechanical seed potato cutters and an elevator enabled him to do a job with seven people that it would have taken forty people to do by hand in the same time—*if* he could have found the forty.

Humphrey's saving in labor costs was $528.

That's why he says, "electricity is the best darn investment we've got."

And he didn't say expense.

Has Socialism Failed in Australia?

On February 5, 1946, there was published in *The New York Times*, by special arrangement with *The Melbourne Herald*, an interesting appraisal by Sir Keith Murdoch of the merits and demerits of socialistic experiments in the land down under. Sir Keith is one of Australia's leading newspaper publishers and hence, presumably, knows pretty well whereof he speaks, although there are doubtless many in and out of Australia who will not agree, in view of the controversial nature of the subject.

Sir Keith says flatly that except for hydroelectric supply in Tasmania, and the brown coal electric supply in Victoria (both government monopolies charging "all the traffic will bear"), government adventures into business in Australia are "marked by ugly deficits, losses of capital, and inefficiencies." He adds:

Australians are not the race of socialized paragons, Mr. Attlee, British Prime Minister, has conjured up. They are, alas, so very human that, when governments have gone into industry, those concerned have used their unions and their pressure politics, their votes, and their influence to get personal advantage.

Actually the list of government enterprises is really not large. And one wonders, indeed, how Australia has got its name for advanced socialization.

It is advanced in pension schemes, childhood endowment, arbitration systems, and a genuine desire to protect workers from bad bosses.

But when scanning the list of government businesses one must remember that Australia has seven governments—one sovereign government for each state and one for the federation—and that all have been, sometimes all together, Labor governments.

As to railways, Sir Keith states that "services are sound" in the two conservative states of Victoria and South Australia, but elsewhere have suffered from "pressure politics" at the expense of cleanliness, modernity, and efficiency. This, of course, may well be only a matter of opinion or impression. But getting down to financial figures, the following gloomy picture seems hard to explain:

The annual money losses have been fantastic since 1915. They reached a zenith of £10,000,000 in 1931, and in the year before the war were still £2,750,000. And this, it should be noted, was without adequate de-

preciations and after scores of millions of pounds of capital had been written off.

We have no idea at present of abolishing government ownership of railways, because there are advantages from a national as well as a profit-making viewpoint. But we may find a way to incorporate both, by lease or conditioned concessions.

Although the managers have been first-class, skillful men, able to take their place in any country—as, indeed, have been the superintendents of other government enterprises—they have been powerless against constant political interference, leading to overdevelopment, overcapitalization, and faulty finance.

There are dirt, slovenliness, and slackness. In quietness, comfort, speed, and service the British railways eclipse our best.

The same tale of deficit operating is told for the state-owned water supply systems and shipping. Says Sir Keith:

These irrigation systems are state owned. The deficits in Victoria alone in ten years were £5,400,000. Other states had similar experiences, and huge capital losses were written off.

The commonwealth government established an overseas shipping line. The government charged the same as other people, but in five years lost £2,500,000 and then sold out at a great capital loss.

THE city of Queensland, for a time, apparently really got started along socialistic lines in a big way. Its variety of municipal ventures challenges the imagination of a reader outside of Russia. Speaking of Queensland, Sir Keith states:

Queensland, for a time, really got going with Socialism. It lost £1,669,804, plus £324,000 uncharged interest, on cattle stations [ranches] and closed them down (private owners made good money); £28,014, plus £3,396 uncharged interest, on butchers' shops; £18,686 on a produce agency; £43,000 on a cannery; £52,000 on a fish-supply venture; £68,000 on cold stores; £75,000, plus £110,000 uncharged interest, on five coal mines; £89,000 on an arsenic mine; £1,196,347, plus £385,000 uncharged interest, on zinc mines and smelters; £75,000 on some metal-treatment works; £44,000 on a gem pool; £37,000 on an iron and steel project; £45,000 on a trawler; and £34,800 on a trading steamer.

In the midst of all these failures—and the great money drain of the state railways drifting back all the time—the government had two successes—the Babina hotel, out of which in thirteen years £62,000 was made, and some metropolitan sawmills which showed a profit.

Everything was finally sold in disgust, and Queensland, like other states, is now out of the trading business, except for the railways and a new wartime shipbuilding yard.

At one time she had 111 shops, stations, and other government trading shows. They all went west. She has nothing now.

Finally, the Australian commonwealth's adventure in coal mining is given a critical review and brief analysis:

The commonwealth has taken over two coal mines and some states own a mine or two.

My first observation must be that strikes occur in them as frequently as elsewhere. The miner, in other words, does not really care.

Victoria's mine, "Wonthaggi," although its product is absorbed by the railways, has accumulated losses of more than £1,000,000 in eleven years. In 1941 it was still losing £2,337 a week. A township has been built upon it, so it must be kept going.

The New South Wales government's mine at Lithgow, says Sir Keith, charges the state railways 2s 6d a ton above ruling prices, but in 1941 was losing £300 a week.

In western Australia the socialistic enterprises are an implement works, with an accumulated loss of £343,334; state sawmills with losses of £44,566; and state brickworks, which lost £1,266 in the last year, for which Sir Keith said he had no figures.

"Ability to Pay" Principle Analyzed

IN the January 31st issue of its New England letter, the First National Bank of Boston presents a thoughtful study of the "ability to pay" principle. In part, the comment states:

The principle of "ability to pay" is being advocated as a magic formula for the determination of wage payments. The question of wage payments under this new doctrine is not to be based upon past performance or current operations — facts about

which are readily available in published statements — but rather upon forecasts of future sales, prices, operating schedules, investments, and prospective profits. Clearly this is a field that distinctly belongs to management, and to yield on this point would be tantamount to turning over the reins of business to a government bureaucracy or the labor unions. The implication of this policy of ability to pay is fundamental and far-reaching, and demands careful scrutiny because of the consequences that would follow its adoption. . . .

The administration should not champion the cause of an organized group representing about 25 per cent of the workers at the expense of the rest of the nation. If an increase in wages for factory workers is a good thing for the country, then it would logically follow that an increase in compensation for all people would be even more beneficial. To be consistent, interest rates, rents, royalties, salaries, and all other forms of income should be raised in order that there may be a gain in buying power all along the line. However, it is obvious that such a boot-lifting scheme would be of no avail as wages and salaries constitute such a large proportion of total costs that prices would have to be lifted to approximately the same extent. Such a procedure would generate a spiral of inflation, with the purchasing power of each dollar sharply reduced. . . .

The crucial issue before us transcends that of the current pressure for higher prices and involves in its scope the survival of the American private enterprise system. The question narrows down to whether business shall be conducted under competitive conditions or our entire economy be regimented under the direction and control of a government bureaucracy, with prices, wages, profits, and all other economic factors, determined by political expediency. To adopt the latter course would be to stifle industrial progress and to plunge the country into some form of totalitarianism.

The more widely these basic truths concerning sound economics are understood, the sooner will free enterprise in this country have the green light to go ahead and function for the benefit of all the people.

Socialist Group Urges Promotion of "Democratic Collectivism"

THE League for Industrial Democracy, in one of its recent news bulletins, issued from its New York headquarters, comments upon the "growing influence . . . of the forces of democratic socialism." After referring to the changes in government in Great Britain and the election trends in France and Norway, the bulletin states:

> . . . The national governments are thus increasingly becoming divided between *capitalist democracies, communist governments,* and governments aiming at a *democratic socialism.* In the United States, the most powerful of the capitalist democracies, the question of fundamental social changes is bound to become, with these developments, one of increasing moment as the years go on. The alternative is likely increasingly to present itself as to whether we wish to retain the present order, an order of semimonopolized capitalism, or proceed toward the democratic socialization of industry.
>
> In this general world picture, the work of the League for Industrial Democracy becomes more vital than ever and its opportunities for service far greater than at any time in its history—service in the field of full employment, of labor and social legislation, of the rights of minority groups, of democratic collectivism, and of democratic world government.

Then, there are set forth the various fields of educational activity in which the league intends to extend its efforts to promote "democratic collectivism":

> The league is anxious to live up to its possibilities—to function effectively in these fields. It desires particularly at the earliest possible moment to reënter the college field with the utmost vigor, as well as to continue its educational activity among labor, civic, professional, church, and other groups.

IT is evident, from the broad scope of these plans, that these groups which are seeking to change our form of government, including the socialization of public utilities, never let up in their efforts to gain their ends. Their persistence should be a warning to those who want free enterprise preserved in this country. Likewise, it should be an incentive to wider educational activity.

The March of Events

FPC Denies Petition

THE Federal Power Commission this month denied a petition filed by certain coal and labor organizations, which had been granted permission to intervene in the matter, for reconsideration and stay of the FPC order of December 29, 1945, authorizing Tennessee Natural Gas Lines, Inc., to construct and operate pipe-line facilities to furnish natural gas to the city of Nashville, Tennessee. The order further directed Tennessee Gas & Transmission Company to establish an interconnection with Tennessee Natural's proposed line.

The order denying the petition stated that "no new facts have been presented or alleged in the interveners' petition which would warrant a revision of the commission's order, and no principles of law are stated in the petition which were not fully considered by the commission before it entered such order."

The interveners filing the petition were National Coal Association, United Mine Workers of America, Order of Railway Conductors, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, and Switchmen's Union of North America.

Authorized to Transmit Additional Energy

THE Federal Power Commission recently authorized the Compania Electrica Matamoros, S. A., of Matamoros, Tamaulipas, Mexico, and Central Power & Light Company of Corpus Christi, Texas, to transmit up to 4,500,000 additional kilowatt hours of electric energy a year from the United States to Mexico. Central Power & Light will transmit the energy over its lines in Texas to a point near Brownsville where delivery will be made to Compania Electrica Matamoros, S. A., for use, distribution, and resale in Matamoros and vicinity.

According to the joint application filed by the two companies, Compania Electrica Matamoros, S. A., is entirely dependent for its electric energy supply on Central Power & Light Company and the presently authorized transmission of such energy is inadequate due to an increase in consumers and usage of electric energy in Matamoros and vicinity.

The electric energy the companies have been authorized to transmit to Mexico has been limited to 7,500,000 kilowatt hours per year at a rate not to exceed 2,000 kilowatts. The FPC's recent order changed the limit to an amount not to exceed 12,000,000 kilowatt hours per year at a rate not in excess of 3,500 kilowatts.

Utility Financing Approved

THE Iowa Power & Light Company's proposal to amend its articles of incorporation and to refinance its outstanding 38,700 shares of $100 par value 6 per cent preferred stock and 11,300 shares of $100 par value 7 per cent cumulative preferred stock was approved this month by the Securities and Exchange Commission.

Initially, the holders of the securities will have an opportunity to exchange their shares on a share-for-share basis for new cumulative preferred stock. Shares of the new issue not taken in exchange will be sold at competitive bidding and the proceeds, with company funds, will be used to redeem on April 1st all the outstanding shares of old preferred stock not deposited for exchange at $105 a share plus accrued dividends.

In accordance with the approved program, Iowa Power intended to make the exchange offer for approximately nine days during the last half of this month. The dividend rate of the new preferred stock is not to exceed 4½ per cent and the price a share to be received by the company is to be between $101.25 and $102.75, plus accrued dividends from last January 1st.

Iowa Power proposes to amend its charter to authorize 100,000 shares of $100 par value cumulative preferred stock and to restrict common stock dividends except as otherwise allowed by the consent of two-thirds of the cumulative preferred stock.

Halsey, Stuart Cleared

THE board of governors of the National Association of Securities Dealers, in a decision made known in New York city on February 7th, held that there was no justification for the rebuke given last November by the business conduct committee of District No. 13 of the association to the investment banking house of Halsey, Stuart & Co., Inc.

The governors ruled, on appeal, that the "acts and practices" of the censured bankers in seeking to arrange the sale of bonds of the Con-

necticut Light & Power Company competitively "did not constitute conduct inconsistent with the high standards of commercial honor and just and equitable principles of trade," and were not in violation of § 1 of Art III of the association's rules of fair practice.

Alabama

Seek Help in Rate Row

CHAMBERS of commerce of three Alabama cities have sent a telegram to David E. Lilienthal, head of the Tennessee Valley Authority, urging him to meet with the Reynolds Metal Company officials in an effort to work out a power rate which would enable the company to continue operation of its Lister Hill, Alabama, plants, it was learned recently.

The action was decided upon on January 30th in a joint meeting of the Florence, Sheffield, and Tuscumbia chambers, according to C. H. Jackson, secretary of the Florence chamber. A dispute with TVA has caused the company to consider closing its plants.

California

FPC Determines Projects' Cost

THE Federal Power Commission recently announced its determination of the actual legitimate original cost of four California hydroelectric projects (Projects No. 1388, 1389, 1390, and 1394), California Electric Power Company, licensee. Out of a total of $7,674,676 claimed, the commission has allowed a total of $7,188,993 as actual legitimate original cost of the projects as of December 1, 1936, the effective date of the licenses, and disallowed $485,683.

The determinations follow accounting and engineering examinations and conferences between members of the commission staff and representatives of the company and the state railroad commission, which resulted in the company's filing revised statements of cost for the projects made up of figures agreed upon at the conference.

The determinations do not include consideration of statements of estimated accrued depreciation of the four projects which have been filed.

Raise Called Threat to Improvement

WAGE increases for San Francisco's municipal railway workers would cut deeply into funds required to keep the city's transit system in an operating condition.

James H. Turner, the city's utilities manager, declared recently that increases at this time would restrict reconstruction and replacement programs. His statement was in reference to the civil service commission announcement that recent salary standardization data indicate general increases for city employees, and its probable effect on the railway's 7-cent fare structure.

William Henderson, secretary and personnel director for the commission, disclosed on February 5th that increases from $10 to $15 a month for Los Angeles county office workers, plus boosts for railway motormen and conductors in private industry, may be applied to San Francisco wage schedules.

"Our current revenues are not sufficient to meet the indicated wage increases and maintain normal operating requirements," Turner said.

The wage increases, if authorized by the commission and the board of supervisors, can be met only at the expense of the $1,158,000 fund budgeted for equipment, additions, and betterments, and reconstruction and replacements, which, Turner said, are necessary to keep the railway operating.

The increased operating costs will also compel a delay in paying the Market Street Railway purchase debt. The railway's management had hoped to liquidate the outstanding indebtedness of $1,200,000 existing at the end of June 30th by next December if the fares were increased to 10 cents cash, or three rides for 25 cents.

Only $488,000 was budgeted by the utilities commission to apply on the debt next fiscal year under 7-cent fare revenues.

Federal Judge Louis E. Goodman on January 29th granted the Office of Price Administration a preliminary injunction preventing the city from raising municipal streetcar fares from 7 to 10 cents.

Judge Goodman held the city had not given thirty days' notice of its intention to raise fares, nor had it given the OPA "a chance for timely intervention" to halt the increase.

The city ordered the rise in streetcar fares to finance new equipment. The new fares originally were to have become effective January 20th, but the OPA intervened.

Gas Line Link Approved

THE state railroad commission recently approved the application of Southern California Gas Company and Southern Counties Gas Company, subsidiaries of Pacific Lighting

Corporation, to proceed with the proposed 200-mile natural gas pipe line to join the projected 720-mile El Paso Natural Gas Company line from the Texas permian basin to the California border.

The commission said the project was both economically and physically feasible and held that the additional gas supply was needed in southern California both to conserve present gas supplies and to meet growing service needs.

The California end of the line from Blythe to Santa Fe Springs is estimated to cost $12,000,000 of the $66,000,000 for the total project. Southern California Gas will bear 75 per cent of the cost and Southern Counties 25 per cent, and will receive gas in that proportion.

If Federal Power Commission approval is granted, construction will begin in October.

Georgia

City Defeats Public Ownership

IN the first test of the public power issue under Georgia's new Constitution, the people of Valdosta on February 5th opposed their city going into the electric power business by a vote of 1,559 to 1,208. Mayor Frank Rose, who staked his political life on the public power issue, was thrown into a run-over election with H. B. Edwards, former state legislator, who opposed government in the power business.

Edwards led the ticket with 1,246 votes. Rose received 1,180 votes, and David Bell, who also opposed public power, got 447 votes.

Three members of Rose's city council were swept out of office in the vote against public ownership of power plants.

The change in the city council organization was said to make the mayor's run-off vital to the city's future dealings with the Georgia Power & Light Company, whose franchise has expired. With three councilmen for and three against public power, the mayor will hold the balance of power in his dealings with private utilities.

The vote was reported to be the heaviest in Valdosta's history and followed the hottest battle in the city's life.

Illinois

SEC Approves Purchase Plan

IN a supplementary report filed on February 8th in the Federal District Court, the Securities and Exchange Commission gave approval, with one minor exception, to the Chicago Metropolitan Transit Authority plans to purchase, unify, and operate the surface and elevated lines.

The SEC is acting as adviser to Judge Michael L. Igoe in the matter and the report was regarded as favorable to the authority program. Judge Igoe controls both properties in bankruptcy and was scheduled to announce on February 15th whether the purchase offer would be submitted to the present traction owners, with his certification that the price is a fair one.

The authority has bid $75,000,000 for the surface lines and will permit the owners to keep certain assets valued at about $13,000,000 more. The "L" owners are to be paid $12,000,000 and may keep real estate valued at about $3,000,000. The offers were designated as fair by the SEC.

Authorized to Cut Rates

THE state commerce commission recently authorized the Iowa-Illinois Gas & Electric Company to reduce gas rates approximately $30,500 annually. Principal beneficiaries are the Rock Island and Moline areas.

The rate reduction reflected reduced cost to the Iowa-Illinois Company in the purchase of natural gas.

Indiana

Gas Line Complaint Filed

A COMPLAINT charging that Panhandle Eastern Pipe Line Company is providing natural gas to users in Marion county in violation of an agreement made fifteen years ago to protect the Citizens Gas & Coke Utility of Indianapolis, a municipally owned utility which sells artificial gas, was filed on February 4th with the Federal Power Commission.

It was claimed that Panhandle is supplying natural gas to the Eastern Gas Company, which serves several communities in adjoining Hancock county, and the town of Oaklandon.

The agreement cited was made in 1931 when Panhandle's predecessor, the Ohio Fuel Gas Company, was building a pipe line across the Midwest to bring natural gas from southwestern oil fields to industrial cities in Indiana, Ohio, and Michigan. It was given permission

to cut across the northwestern corner of Marion county, providing it would not sell or furnish natural gas, either directly or indirectly, in the county without permission of the county commissioners, the Indianapolis works board, and directors of the city's utility.

Kentucky

Ripper Bill Passes Senate

PROPONENTS of the bill to amend the 1942 TVA Enabling Act won their first skirmish in the state senate on February 4th by a vote of 21 to 10.

The state senate subsequently broke across party lines and approved amendment of the 1942 act with a bill described by the chairman and two directors of the Tennessee Valley Authority as "of disastrous consequences to the people of Kentucky."

The 21-to-10 vote defeated a motion by Senator Henry Ward, Paducah, leader of the opposition, to adopt his minority report in lieu of the majority report of the committee on public utilities, which recommended the bill for passage. Senator Ward was the only signer on his minority report.

Earlier in the hearing Senator Ward and his side attacked the bill, sponsored by Senator Ray B. Moss, Pineville, as a measure to prevent Kentucky cities from acquiring their own electric systems. The mischief would be done, they argued, by repeal of the 1942 section allowing cities to build duplicating systems in event they cannot acquire existing facilities by negotiations.

Joseph C. Swidler, Knoxville, Tennessee, general counsel for TVA, termed the amendment an "absolute prohibition of construction of electric plants in communities in which an existing plant is located."

"It has been the universal experience, not only in Kentucky but throughout the country, that the right to construct its own system is the only bargaining power a municipality has in trying to negotiate for the purchase of a system at a fair price," Swidler wrote in a letter to Senator Ward.

"When a utility knows that construction is impossible, it is hopeless for the municipality to attempt to negotiate with the company," the attorney continued.

Turning to provisions of the proposed bill changing the method of determining the price in such purchases, he wrote:

"The bill provides that the exclusive means of acquisition shall be arbitration or condemnation. The requirements would make it possible for a utility to impose on any municipality such extended and expensive litigation that acquisition would become entirely impractical."

Mr. Swidler said if the bill passed the TVA would have to cancel its allocation of power to Paducah and western Kentucky.

In his analysis of the bill, the TVA attorney said no municipality would institute condemnation or arbitration proceedings because of the difficulty in securing adequate financial backing under such an arrangement.

The Kentucky senate passed the bill on February 7th by a vote of 24 to 14.

Electric Rates Cut

THE Louisville Gas & Electric Company will make electric rate reductions estimated at $600,000 a year, effective February 15th, it was announced recently by Thomas B. McGregor, chairman of the state public service commission.

The reduction, McGregor said, was in response to the commission's order of November 14th directing privately owned utilities operating in Kentucky to show cause why their rates should not be reduced commensurate with excess profits paid on 1944 earnings, or accrued on 1945 earnings.

The reduction brought to $1,063,000 the total annual savings to consumers resulting to date from the show-cause order, McGregor said. Kentucky Utilities has reduced commercial and industrial rates $250,000 a year, effective February 1st, and the Kentucky-West Virginia Power Company has made a general reduction of $213,000 a year.

The reduction applies to four classifications of consumers which, with the annual savings to each based on 1945 volume, are: residential consumers, $307,500; small commercial consumers, $40,100; and large power consumers, $79,000.

Commission Chairman McGregor said the reduction had no connection with a petition by the city of Louisville asking the commission to cut company rates by $3,400,000 a year.

Mayor E. Leland Taylor, after declaring himself disappointed in the reduction ordered by the commission, said the city would follow up its plea for the larger reduction. The mayor said the commission had informed him it would keep in close touch with developments and order further reductions if the $600,000 one did not prove adequate.

Wage Raise Granted

THE Kentucky Utilities Company on February 5th agreed to grant a "satisfactory" wage increase to 200 of its unionized employees in the Pineville area, thereby ending a week's long dispute and strike threat.

Announcement of the settlement of union-company wage differences came after a con-

ference of company officials, union representatives, and Federal labor conciliators.

The KU workers affected are members of the United Construction Workers, AFL.

R. M. Watt, president of KU, said the present company-union contract would continue in effect until November 24, 1946.

An injunction suit filed in Bell-Harlan Circuit Court in connection with the union's strike threat will not be pressed further in view of the settlement, officials reported, adding that attorneys would ask that a temporary injunction granted by Judge J. S. Forester be dissolved.

The National Labor Relations Board on February 6th announced it had certified the International Brotherhood of Electrical Workers, AFL, as the bargaining agent for the Kentucky Utilities Company's western division.

The board said an election held December 4th and 5th by employees showed 74 votes cast for the AFL union and 64 against it. It said there were approximately 148 eligible to vote.

The union was designated as the bargaining agent for all production, maintenance, and distribution employees of the company's western division, including service foremen at Barlow, Fulton, Earlington, and Greenville.

Minnesota

Natural Gas Fight Shaped

GROUPS opposing and supporting natural gas for St. Paul intend to carry their argument to the citizens in well-organized campaigns prior to the general city election April 30th, when the gas issue will be voted on, it was reported recently.

This, it is believed, will make the natural gas fight one of the top controversies.

If the vote supports demands for natural gas in St. Paul, it is generally believed the Federal Power Commission will approve an application by the city for such service. If a majority of citizens register objections by a negative vote, there would be little chance of getting Federal approval.

Already lining up for a campaign to block general use of natural gas in the city are industries and groups of workers and other citizens who fear the results of putting the new fuel into competition with manufactured gas, coal, and oil.

Preparing to support natural gas as a fuel available to all business and homes are industries which say they need this type of fuel if they are to meet competition. They will be joined by citizens' groups which believe the best interests of St. Paul demand full access to natural gas.

Nebraska

Power Contract Approved

MEMBERS of the Lincoln city council, after they had all signed it, recently approved the resolution ratifying the power contract previously tendered by the three hydros, and Mayor Marti added his signature.

The city, however, cannot immediately purchase electric energy from the hydros under terms of the contract. First the city light plant must construct an interconnecting transmission line reaching from the A street station to the power substation of the hydros in West Lincoln. Construction, with the exception of 1¼ miles, will be within the city and the commercial light department must pay the bill, reckoned at approximately $80,000.

Construction, Director Erickson said, will require from six to eight months, depending largely on how long it takes to procure the necessary materials.

Mr. Erickson, as a result of his study of the contract, said that provision is made for purchase of power and energy by the city and does not contemplate the exchange of power nor the sale of power to the power districts.

"The city would purchase all of the electrical power and energy requirements of the municipality necessary to supply the city's load, in excess of the power and energy generated in the city's existing plant."

A point, as contained in the analysis of the contract made by Mr. Erickson, said to be of extreme value to the city, was as follows:

"In the event that it is not necessary for the city to purchase any power or energy from the districts during any month, there will be no charge by the districts for that month."

For any month that the city receives power and energy, the engineer continued, the amount of the demand charge will be determined by adding the demand from the city's plant and the demand supplied by the districts with a further proviso that the city will only need to pay for that portion of the above total that is in excess of 4,900 kilowatts, which is the present firm capacity of the city plant.

The districts involved are Central Nebraska Public Power and Irrigation, Loup River, and Platte Valley Public Power.

New Jersey

Antistrike Bill Reported in Senate

GOVERNOR Walter E. Edge's bill empowering the state to take over and operate any public utility in New Jersey in event of a strike was released on February 4th from the state senate's judiciary committee.

Senator Charles K. Barton, of Passaic, majority leader and judiciary committee chairman, announced that a public hearing on the measure, which has evoked violent opposition from organized labor, would be held on February 15th in the senate chamber.

"Never in the history of New Jersey has any such repressive legislation ever been offered," stated a letter signed by Louis P. Marciante, of Trenton, president of the State Federation of Labor, and Mayor Vincent J. Murphy of Newark, secretary-treasurer.

It was charged by the two officials in an analysis of the measure, known as Senate 91, that it copies "the notorious Smith-Connally law"; also that it would destroy collective bargaining and put an end to unions of utility employees.

The bill, sponsored by Senate President Haydn Proctor, provides that employees intent upon striking must notify the State Mediation Board.

During the next fifteen days, the board must try to settle the dispute, and then report its success or failure to the governor. If the workers insist on striking, the governor would name a 3-man board of investigation to make a report and recommendations in twenty days. If the workers still insist on striking, the governor, in the name of the state, may seize and operate the struck plants for sixty days.

A labor relations bill designed to be "acceptable to all parties," guaranteeing workers the right to organize and bargain collectively through representatives of their own choosing, and to prevent "improper interference" with such rights, was introduced in the senate by Senator Harold A. Pierson, Morris county, Republican.

The bill, according to an accompanying statement, follows the rights and principles stated in the Federal Labor Relations Act, and provides for enforcement in the same manner as the Federal Railway Labor Act.

Loses Rail Tax Plea

THE U. S. Supreme Court recently refused to review a decision by the New Jersey Court of Errors and Appeals directing the state controller to pay to various municipalities $8,076,047 which had been collected as interest on railroad tax arrears.

The review was asked by Homer C. Zink, controller of the New Jersey treasury. He contended the New Jersey court by its decision committed an unconstitutional act.

Mr. Zink said the case arose after defaulting railroad companies in 1944 paid into the state treasury a large amount of taxes, plus $15,276,000 in interest. Jersey City and other municipalities then demanded the $8,076,047 as their share of the interest. Mr. Zink refused the demand.

The state legislature in 1945 passed an act to give the municipalities $3,301,539. Jersey City and the other municipalities interested successfully attacked the act as unconstitutional and won an order by the court of errors and appeals requiring Mr. Zink to make the distribution they asked.

New York

Ouster of Quill Urged

IN letters to Mayor O'Dwyer and other members of the New York city board of estimate and members of the city council, the trustees of the City Club of New York suggested recently that the council consider the expulsion of Councilman Michael J. Quill, president of the Transport Workers Union, on the ground that his action in threatening a strike of subway employees was illegal and in violation of the city charter.

The letters, signed by Walter LaM. Sparry, president of the club, and Howard C. Kelly, chairman of a special committee, recalled that Mr. Quill on January 18th announced that a strike would be called within forty-eight hours unless he received assurance that the Fifty-ninth and Seventy-second street power plants would not be sold, as suggested by General Charles P. Gross, chairman of the board of transportation, without prior submission to a referendum. Subsequently, Mayor O'Dwyer held a conference with Mr. Quill and announced that he would not approve the sale without a referendum.

Mr. Sparry and Mr. Kelly asserted that employees of the city-owned transit system were under civil service and that any strike that interfered with the performance of any public function was in effect "an insurrection against constituted lawful authority." The letters quoted former Mayor Fiorello H. LaGuardia as having said in 1941, when Mr. Quill threatened a strike, that "the city does not and cannot recognize the right of any group to strike against the city."

"Mr. Quill's present threat to the city gov-

ernment and the public to call a quick strike on all its transit facilities unless his ultimatum was complied with was made in a matter where no wages, working hours, conditions of employment, or any other labor question were involved," the letters continued. "The fact that Mayor O'Dwyer promptly yielded to his ultimatum without any assertion of the rights of the people was most unfortunate.

"The implied imprimatur of official sanction that Mr. Quill and his organization have received augurs ill for the collective bargaining of the other matters referred to by the mayor and for the protection of the people of this city from the dire consequences of a strike by tying up the transportation system."

All Fuels Rationed

DRASTIC orders barring the delivery of coal, other solid fuels, and fuel oil to all places of amusement, including theaters and motion picture houses; rationing deliveries to public utilities, transportation, and communication services and dwellings on a strict priority basis; and directing that all outdoor electric display signs be turned off until further notice, were issued on December 6th by Mayor O'Dwyer because of the critical fuel shortage created by the strike of the tugboat men in the New York port area.

The mayor's orders, contained in two proclamations, on the strength of a declaration of emergency adopted by the board of health, were far more drastic than those promulgated by former Mayor Fiorello H. LaGuardia because of the fuel shortage last winter.

Mayor O'Dwyer also ordered the "browning out" of all street lights wherever possible, directed that all interior temperatures be kept no higher than 60 degrees except in buildings devoted to the care of the sick and infirm, and asked all users of gas to reduce their consumption drastically.

City Fuel Administrator Albert Pleydell reported that the Consolidated Edison Company, with coal on hand and in stockpiles, could operate at normal capacity for two weeks without need of fresh supplies. The company uses about 30,000 tons of coal daily.

Job Bias Laid to Utilities

STATE Senator Louis L. Friedman early this month charged that Brooklyn public utilities are discriminating in their employment policies against Jews. Speaking on the floor of the senate in Albany, Mr. Friedman announced he had written District Attorney Miles F. McDonald, of Brooklyn, asking a grand jury investigation.

The senator, a Democrat, from Brooklyn's Coney island district, named the Brooklyn Union Gas Company, the New York Telephone Company, and the Consolidated Edison Company as concerns which, he said, were violating state antidiscrimination laws in employment practices in their Brooklyn offices. The gas and telephone companies issued prompt denials, while Consolidated Edison had no immediate comment.

Hugh H. Cuthrell, vice president of Brooklyn Union Gas, declared his firm was observing both the letter and spirit of the law. The telephone company also denied discrimination among employees or applicants.

Ohio

Tax Law Upheld

YOUNGSTOWN'S utility tax, expected to yield $300,000 a year in revenue to the city, on February 8th was upheld by the seventh district court of appeals, in session at Youngstown.

Indications were that the case would be carried to the Ohio Supreme Court.

The utility tax was levied in an ordinance enacted a year ago by city council.

Opposition first arose from a real estate organization. At the request of a taxpayer, Law Director John W. Powers filed suit, opposing enforcement of the levy. The suits subsequently were combined.

Funds acquired through the tax on telephone, water, electric light, and gas services meanwhile have been collected and placed in escrow.

Steps have been taken by the city to put the levy in force again for the period of 1946 but no money will be available to the city until court action on the first ordinance is completed.

Oklahoma

Tells of GRDA Deal

CONTRACTS between the Interior Department and the Oklahoma Grand River Dam Authority, involving details for the return of the Grand river hydroelectric project to state control, have been approved, Senator Elmer Thomas (Democrat, Oklahoma) was told recently.

The information, the Senator informed a reporter, was contained in a letter to him from Q. B. Boydston of Tulsa, GRDA attorney.

Legislation authorizing the Interior Department to return the project, seized by the government in 1941, and permitting reduction in interest rates of bonds, will not be introduced, however, the Senator said, until it has been acted upon by the Budget Bureau.

The bill has been approved by the Interior Department Power Division officials, and "in principle" by the Federal Power Commission.

Boydston had asked Thomas to withhold the introduction until details could be worked out with the Interior Department and proposed contracts drawn which were satisfactory to all concerned.

Utility Cuts Rates

THE Public Service Company of Oklahoma, complying with the state corporation commission, recently filed an electric rate schedule embodying reductions totaling approximately $652,000 a year for the 222 cities and towns it serves. The new rates became effective following the January meter readings, the commission said.

Reford Bond, commission chairman, said the new schedule would allow the firm an earning capacity of 5.25 per cent. In entering the order, the board noted the rate was among the lowest ever established for a major utility firm in Oklahoma, but expressed the belief the rates would allow an adequate income.

Almost half the saving will come at Tulsa, where Paul Reed, commission auditor, said the reduction will amount to an estimated $306,220 a year. In Tulsa, he said, the average residential rates would be dropped from $3.92 to $3.69 per hundred kilowatt hours, and commercial and industrial rates were lowered proportionately.

Oregon

FPC Determines Original Cost

THE Federal Power Commission on February 5th announced its determination of the actual legitimate original cost of the Cove hydroelectric project (No. 1447—Oregon), Pacific Power & Light Company, Portland, Oregon, licensee. Out of $303,376 claimed by the company, the commission has allowed $296,348 as actual legitimate original cost of the project as of October 4, 1938, the effective date of the license, and disallowed $7,028.

The determination followed an accounting and engineering examination and a conference between members of the commission staff and representatives of the company and of the Oregon Public Utilities Commission, which resulted in the company's filing a revised cost statement.

No action had been taken on the statement of estimated accrued depreciation totaling $67,940.

The Cove project, which was originally constructed in 1915 under permit to Deschutes Power Company, is located on the Crooked river in Jefferson county, Oregon.

Pennsylvania

Transit Strike Paralyzes City

ALL public transportation for Philadelphia's 2,000,000 residents was stopped on February 11th by a strike of 9,655 transit workers.

The entire rail and bus network of the Philadelphia Transportation Company was shut down at 12.01 AM. Every trolley, bus, subway, and elevated train was parked in a car barn or at a terminal point.

PTC service was back to normal on February 13th. But the company was pictured as still insisting that its fares must be increased to absorb a wage rise and other concessions.

Tennessee

Utility Assessments Examined

CHAIRMAN Samuel S. Pharr of the state railroad and public utilities commission on January 31st said the commission already had begun examining previous assessments of railroads and other utilities with a view of making adjustments.

Governor McCord had previously issued an order directing the commission to "reconvene and make proper assessment of any property inadequately assessed or omitted from taxation for 1944 and prior years."

The governor's order came on the heels of greatly increased utility assessments approved by the state board of equalization last November, and was interpreted in some circles as a further antagonization of the utilities. Political repercussions are expected in some quarters in view of the fact that 24 utilities have

entered court protesting the 1945 assessments.

The commission said that railroads "have systematically failed to report some property and incorrectly reported other," and added: "We think it is conservative to say that the railroads in Tennessee owe the public more than $1,000,000 in omitted taxes."

To Drop Collecting Agency Plan

THE Knoxville Utilities Board recently indicated it would abandon its policy of collecting instalment payments on electrical equipment for local firms, after board members disagreed over the qualifications of The Valley Company of Chattanooga to participate in the program. The company is a subsidiary of the Pioneer Bank of Chattanooga.

KUB Attorney Warren Kennerly was instructed to find out whether a small Market street office rented by The Valley Company is a permanent branch office, before the firm is included under the payment collection plan.

W. C. Ross reported there are only two firms participating in the newly authorized program as yet, and said both firms have stated their willingness to have the service canceled. Purpose of the service is to encourage local sale of electrical equipment to enable KUB to sell more electricity in the area.

KUB also rejected three bids on power equipment for the KUB gas plant as too high.

Texas

Natural Gas Saving Planned

WITH only approximately one-third of the 52 oil fields in the Corpus Christi section of the state equipped or soon to be provided with plants for processing flare gas for reinjection into producing sands, reservoirs, or for sale to pipe lines, the state railroad commission recently served notice to 200 operators at a conference in Corpus Christi that it intends to take steps to prevent the waste of practically all the casinghead gas in the state.

Representatives of companies announced that 7 plants would be constructed very shortly.

Few, however, will conserve all the gas in any of the fields. Eleven other fields now have plants which are making use of some of the casinghead gas.

Other companies announced they were holding meetings with operators in their fields in efforts to agree upon the construction of plants to utilize gas now being vented into the air.

The commission announced that the next of the four hearings would be held in Houston on February 20th.

Utah

UP&L Assists with Power Load

APPROXIMATELY 25 per cent of Lehi residences, formerly receiving power from the municipal lighting plant, on February 1st were receiving Utah Power & Light Company power, following an agreement reached between the city and utility company. The company is furnishing power, under a temporary contract, to certain portions of the city.

There were said to be some consumers throughout the community already on private Utah Power lines.

City officials stated those on the city system will continue to be billed by the city, the latter making the purchase of power for resale purposes.

The move was made to assure a more constant and uniform flow of power to the remainder of the consumers of city power and to allow for a possible shutdown of one or more units of the plant for repair work.

Washington

Power Permit Hearing

ARGUMENT opened on February 5th on several motions filed in the application of Pacific Power & Light Company and others for a writ of mandamus which would deny a franchise to the new Walla Walla electric coöperative.

The hearing, before Judge B. Horrigan of Pasco, involved a motion for demurrer filed by the defendants, who seek to show that the plaintiffs have no case on which to repeal the franchise issued recently by the county commissioners, even though all of the allegations in the application were admitted.

Approval of the motion for a demurrer would have the effect of ending the case immediately, but if the motion should be denied the case would come up for a hearing of facts at a later date.

The Latest Utility Rulings

Original Cost Ruling by Communications Board Upheld by Supreme Court

NEITHER compliance with accounting rules of the Interstate Commerce Commission (predecessor of Federal Communications Commission with respect to telephone companies) nor a stipulation in litigation over accounting rules barred the Communications Commission from requiring a telephone company to charge to surplus an amount in excess of "original cost," according to a decision of the United States Supreme Court.

The Uniform System of Accounts of the Communications Commission became effective January 1, 1937. Telephone companies were obliged to establish or reclassify investment accounts on the basis of "original cost." The New York Telephone Company, in reclassifying its accounts, estimated amounts attributable to surviving property purchased from its parent, American Telephone and Telegraph Company, which it had recorded on the basis of structural value. The difference between those estimates and estimated original cost to American was placed in Account 100.4, Telephone Plant Acquisition Adjustments. The company began amortizing this sum by charges and credits to operating expense with concurrent entries to amortization reserve.

The commission, after investigation, directed the company to charge $4,166,510.57 to Account 413, Miscellaneous Debits to Surplus, and to make appropriate concurrent entries to other accounts [52 PUR(NS) 101]. The company sued to enjoin the order. A motion for summary judgment was denied [55 PUR(NS) 321] and the district court permanently enjoined the order.

The lower court held that the entries were legal when made, since they were in accordance with the accounting system of the Interstate Commerce Commission, and that the present commission could not apply retroactively a new system to write down the company's surplus. That court also held that the order was contrary to the Supreme Court decision in American Teleph. & Teleg. Co. *v.* United States (1936) 299 US 232, 16 PUR (NS) 225, and to a stipulation filed in that case by the solicitor general.

The company and the government differed on the question whether an alleged write-up had been eradicated. There was involved the question whether there had been an underdepreciation. The commission apparently found that there was underdepreciation, and the Supreme Court could not say that such conclusion was erroneous.

The company urged that so much of the order as affected property already retired was improper, because the sole purpose of original cost accounting is to show separately the amount by which the price paid by the accounting company for property now in service exceeded the original cost of that property. The court said, however, that the purposes of an original cost system of accounting are broader. Under such a system inflation in accounts not only may be segregated but also may be written off.

The decision in American Teleph. & Teleg. Co. *v.* United States, *supra,* involved an attempt to set aside an order of the commission prescribing a uniform system of accounts. The companies had objected to the order's "original cost" provisions as preventing them from recording actual investment, with the result that the accounts might not fairly exhibit their financial situation.

The court had replied that such a consequence would not be entailed, but that under the order only a fictitious or paper increment would be written off. Counsel for the government had reduced to writing his statement in that regard in behalf of the commission. This the court accepted as an administrative construction binding upon the commission in future dealings with the companies.

The lower court thought the order was erroneous in view of this stipulation, at least in the absence of proof that the excess of price over the seller's net book cost was not a true increment of value. The Supreme Court thought this misconceived the stipulation's purport and effect. It was said that when the commission finds, after full hearing and on evidence which sustains the finding, that part of the cost is due to a profit made by an affiliate at the time when the affiliate has transferred property, the commission has determined "after a fair consideration of all the circumstances," in full compliance with the stipulation, that there has been no true investment but only a "fictitious or paper increment" within the meaning of the prior Supreme Court decision.

Mr. Chief Justice Stone, in a dissenting opinion, expressed the view that the commission was bound by and had not complied with the stipulation to which it was a party and which the court had approved. *United States and Federal Communications Commission v. New York Telephone Co.*

Strike in Steel Plant Requires Curtailment Of Gas Service

PROMPT action was taken by the Illinois commission to meet an emergency faced by the Peoples Gas Light & Coke Company when the steel strike threatened the supply of coke oven gas originating in steel plants. On January 18th the company sought authority to curtail gas service to some of its industrial customers. A hearing was held on the same day and authorization was granted immediately.

The company supplies mixed gas having an average heating value of not less than 800 BTU per cubic foot. Natural gas is received from Chicago District Pipeline Company; carburetted water gas is produced in company plants and a plant of Public Service Company of Northern Illinois; and the major part of coke oven gas is purchased from three steel companies. The consuming public has equipment and consuming appliances that have been built or adjusted to work properly with 800 BTU gas. Any increase or decrease of even 5 per cent would cause serious inconvenience and present hazards.

The commission found that a sufficient supply of gas would be available to meet the requirements of other customers only if authority were granted to curtail or discontinue the supply to selected customers. Selection of customers for such curtailment was said to be an operating problem with respect to which no specific rules could be laid down in advance but which could be met only by the exercise of judgment by the officials in charge of the operation of the system.

The general principles to be followed by such officials would be curtailment or discontinuance of gas to such consumers (a) as normally use large quantities of gas, (b) as are not engaged in an activity essential to the health, safety, and well-being of the communities, and (c) as can be conveniently and readily utilized by the management. Authorization was granted for such curtailment within this general principle, and it was ruled that such selection did not constitute discrimination among customers.

The company was also permitted to require like curtailment or discontinuance of gas supply to similar customers who, through the operation of an interchange gas agreement with Public Service Com-

pany of Northern Illinois, receive a supply of gas indirectly from Peoples Gas Light & Coke Company. *Re Peoples Gas Light & Coke Co. (No. 33466).*

Service Obligations When Employees Are Barred by Picket Line

A PUBLIC utility company whose union employees are barred from newly constructed houses by the picket line of a union of construction workers should invoke the aid of an appropriate tribunal. It cannot be excused from discharging its statutory obligation until it has made a thorough effort to have the matter in controversy determined. Such was the decision of the New York commission where complaint was made against failure to supply gas and electric service.

Applications for service had been made by a builder who operated on an open-shop basis and again by individuals who had signed contracts for the purchase of homes. Veterans of the late war were receiving priority in the purchase of homes in the real estate development. The builder himself was willing to construct and connect up gas and electric services, together with meters, if allowed to do so.

Witnesses testified that utility employees would be expelled from their union if they crossed the picket line and, since the utility company operated on a closed-shop plan, such employees would lose their jobs. It was also indicated that if the company consented to installation by the builder and then supplied service, there would be a strike against the company. The commission said:

> The commission is not an arbiter of labor disputes. It is charged by statute with the duty of seeing that public utilities discharge their obligations to the public by furnishing service without unjust discrimination. Under the statute the Long Island Lighting Company has the duty of furnishing electricity and gas to these customers. If the company does not discharge its statutory duty, then this commission may either by order direct it, and, in the event such order is not obeyed, proceed with a penalty action against the company, or bring a summary action to compel the company to perform its statutory duty. Issuing such an order under existing circumstances would seem to be a useless gesture.

The company, it was said further, has an obligation to furnish service, and it also has an obligation to protect its employees from any embarrassment or claim that they have violated their obligations to their union. The company, said the commission, could submit to the courts the question whether the picket line might properly interfere with the performance by its employees of the work which it was required by statute to perform. *Re Long Island Lighting Co. (Case No. 12258).*

Subholding Company Not Permitted to Acquire Affiliated Transportation Company

AN application by Texas Utilities Company (a holding company subsidiary of American Power & Light Company) for authority to acquire the common stock of Dallas Railway & Terminal Company (a subsidiary of Electric Power & Light Corporation), which was to be sold at competitive bidding, was denied by the Securities and Exchange Commission. The commission found that the applicable standards of the Holding Company Act had not been satisfied and made adverse findings under §§ 10(b)(3) and 10(c)(1) of the act. American Power & Light and Electric Power & Light (both subsidiaries of Electric Bond and Share Company) have been ordered to dissolve.

Dallas Power has had operating revenues in excess of $9,000,000 annual-

ly, while the annual power bill to Dallas Railways has amounted to about $117,000. The record was said to be bare of any facts indicating a substantial operating relationship between the companies. Whatever relationship did exist was likely to be rendered almost entirely insignificant by the marked trend toward diminution of street railway service in favor of increased motorbus activity. The companies had maintained separate offices in separate buildings since 1917, and they had no common employees.

The applicant and the city of Dallas pointed to the long historical association between Dallas Railway and Dallas Power and urged that, in the course of unification of the traction properties, Electric Bond and Share took over the traction and electric properties under separate franchises which contemplated the continuance of common control. The commission found no interrelated provisions in the franchises, and it was noted that, although such franchises contained recapture clauses in favor of the city or its licensee, there was no requirement for recapturing both properties together, nor was there any provision which prevented the sale of either to nonaffiliated interests.

Section 10(b)(3) provides that the commission shall approve acquisition unless this will unduly complicate the capital structure of the holding company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of the holding company system. Section 10(c)(1) provides, among other things, that the commission shall not approve an acquisition by a holding company unless it finds that this is not detrimental to the carrying out of the provisions of § 11. Clearly, said the commission, any property whose disposition would be required under § 11(b)(1) might not be acquired under the standards of § 10.

Commissioners Healy and Caffrey, in a dissenting opinion, noted that American Power & Light had stipulated that it would divest itself of its interest in Texas Utilities. Texas Utilities and its subsidiaries are Texas corporations predominantly intrastate in character and, therefore, Texas Utilities would be potentially entitled to exemption as a holding company.

The majority, however, declared that the important fact was that Texas Utilities was presently both a registered holding company and a subsidiary of a registered holding company. The commission added:

> We have seen that the standards of § 10 do not permit a combination of electric properties and transportation properties in a holding company system unless a substantial operational relationship exists between the properties. We think it inconsistent with that policy to permit the combining of unrelated utility and nonutility properties, which otherwise would not be permitted under the act, merely because at some future date the acquiring company may cease to be subject to the provisions of the act.

Re Texas Utilities Co. et al. (File No. 70-1196, Release No. 6373).

Change-over to Natural Gas at Lower Rates Approved by Commission

THE North Shore Gas Company secured favorable action by the Illinois commission on its petition for authority to change over its entire system from service by manufactured gas to service by natural gas. The company proposed to file new rate schedules which would represent a substantial saving to customers and also proposed to bear the expense of adjusting customers' appliances to permit the use of natural gas.

Manufactured gas was obtained mainly from a coke oven gas plant. This plant had become inadequate to supply the needs of the public. Coal was brought from West Virginia and its cost had increased from $3.48 a ton in 1933 to $6.09 a ton in 1945. The company had been

unable to attach new customers since 1942, and in that year had a serious interruption of supply. An adequate supply of natural gas will become available if certain authorities are granted in a proceeding now pending before the Federal Power Commission. The change is contingent upon the outcome.

The commission had received communications from various cities and villages, all approving the proposed change-over and suggesting favorable and speedy action.

The commission, in addition to approving the change-over and the new rates, authorized the amortization of the Waukegan coke oven plant but reserved jurisdiction for the purpose of directing further details with respect to amortization. The coke oven plant was unsuitable for use as a stand-by reserve for the reason that it could not be put into service quickly but requires a long period of warming up, and may require replacement of refractory brick or other material. *Re North Shore Gas Co. (33264).*

Objections to Assessment for Investigation Expense Overruled

A COMPANY which had been involved in commission and court proceedings relating to rates unsuccessfully opposed an assessment by the Pennsylvania commission for assessments incurred in an examination of company records. This examination was for the purpose of ascertaining the amounts due patrons as reparations for overcharges.

The company's objections were (1) that the investigation and examination were not made in the performance of commission duties and were without lawful authority; (2) that the commission was not at the time of the examination a party to a certain court proceeding in connection with which the examination was made; and (3) that the data procured as a result of the investigation were for the benefit of the complainants and could have been obtained by subpoenaing company records.

A complaint by consumers had been instituted to recover reparation while a rate investigation instituted by the commission was under way. The commission had fixed the reparation period, and on successive appeals to the courts other reparation periods were established. The duty of directing refund payments, said the commission, was imposed upon it by § 313(a) of the Public Utility Law.

It became apparent, said the commission, that the parties were unable or unwilling to produce the evidence prerequisite to a proper order in the case, and an examination of the records was essential. Specific authority to make such an examination was vested in the commission by §§ 906, 908, and 1,008 of the Public Utility Law. The commission's action was said to be a procedural step justified and necessitated by the state of the record.

The first objection was overruled because of the commission's rate case against the company, the judicial holding that reparations were due for a specified period, the pending reparation proceeding, the commission's duty to order reparations in definite amounts, and the commission's decision in the exercise of its discretion that an examination was necessary to expedite proceedings.

Although the company was not a party litigant in a proceeding by consumers, that proceeding was a claim for reparations growing out of the commission's own rate case against the company. Further, it was said to be the commission's duty, in awarding refunds, to protect all customers.

The subpoena procedure suggested had been attempted and successfully objected to by the company. It had become apparent that inordinate delay and controversy could be avoided only by commission action directing its own accountants to ascertain the facts. *Re Cheltenham & Abington Sewerage Co.*

Exemption from Competitive Bidding

THE District of Columbia commission authorized the Washington Gas Light Company to issue, exchange, and sell 40,000 shares of $4.25 cumulative preferred. It waived competitive bidding provisions of its Order No. 1465.

The record indicated that approximately 70 per cent of the outstanding $5 cumulative preferred stock outstanding, to be exchanged or redeemed, was held by local security holders.

This indicated that it was highly improbable that outside investment dealers would be interested in bidding competitively for an issue of the size contemplated, particularly in view of exchange provisions of the proposed transaction. Moreover, the price to be received by the company and the underwriting cost compared more than favorably with transactions of a similar nature by other companies. *Re Washington Gas Light Co. (Order No. 2977, PUC No. 3204/7, GD No. 2003, Formal Case No. 350).*

Other Important Rulings

THE Washington department held that an application for a common carrier permit to transport logs as a logging contractor should be denied where the proposed operation would constitute combined common and private carrier operation, where the applicant would be operating as a common carrier seasonally only, and would be totally unable to devote his equipment to the business of transporting commodities for the general public. *Re David Wood (Order MV No. 43645, Hearing No. 3617).*

A person transporting his own property for the purpose of sale or in the furtherance of his own commercial enterprise is a private, rather than a common or contract, carrier within the meaning of the Motor Carrier Act, according to a recent ruling of the circuit court of appeals. *Interstate Commerce Commission v. Tank Car Oil Corp. 151 F2d 834.*

The California commission, in dismissing a complaint against the alleged failure of an electric utility to give effect in decreased rates to presumed savings resulting from a bimonthly meter reading rule, held that under established ratemaking practices it would be idle to attempt to reflect in rate schedules minor cost fluctuations due to the promulgation of such an emergency rule, especially during a period in which other and more important costs of operation have been sharply upward. *Cooper et al. v. Pacific Gas & Electric Co. (Decision No. 38206, Case No. 4750).*

The Wisconsin commission, in authorizing a gas company to convert to liquefied petroleum gas to be purchased under a contract, declared that the cost of the purchased gas to the company should not be in excess of what the same would cost the company if it were to finance the equipment and supply itself with gas. *Re Peoples Gas Co. (CA-2231, 2-U-2073).*

The Wisconsin commission, in authorizing conversion to dial telephone service, required that conversion expense be amortized over a 5-year period and that rate case expense be amortized over a 3-year period. An indicated rate of return of 6.9 per cent under approved rates was said to be somewhat excessive, but it would allow the corporation to absorb a decrease in toll revenue or an increase in operating expenses above those estimated as reasonable at the time. *Re Lisbon Telephone Corp. (CA-2194, 2-U-2054).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 61 PUR(NS) NUMBER 5

Points of Special Interest

Titles and Index

TITLES

INDEX

Correction

Re American Power & Light Co. (1945) 61 PUR(NS) 129. (Preprinted in PUBLIC UTILITIES FORTNIGHTLY, January 31, 1946.) On page 149, the dissenting opinion of Commissioner Healy, beginning at the tenth line, should be changed to read: "(3) a requirement that the company pay $1,100 and accrued interest for each $1,000 debenture is unfair . . ."

Re Consumers Power Company

D-2948
December 20, 1945

PROCEEDING *to determine ownership and distribution of impounded funds resulting from reduction of wholesale natural gas rates as ordered by Federal Power Commission, in so far as concerns a distributing company and its ultimate consumers; order entered determining that ultimate consumers are beneficial owners of any interest in funds.*

Reparation, § 12 — Jurisdiction of state Commission — Disposition of impounded funds — Rate reduction to distributing company.

1. The state Commission has power and authority to hear and determine the issue as to ownership of funds impounded by a Federal court, pending appeal from an order of the Federal Power Commission reducing rates to a local gas distributing company, and to determine the relative rights of the company and its ultimate consumers, p. 259.

Rates, § 376 — Natural gas — Purpose of Natural Gas Act — Protection of ultimate consumers.

2. The intent and purpose of Congress in enacting the Natural Gas Act was to protect ultimate consumers from excessive charges by natural gas companies engaged in the transportation and sale of gas in interstate commerce for resale, p. 260.

Reparation, § 43.1 — Distribution of refunds — Charges to distributing utilities — Benefit to ultimate consumers.

3. Funds impounded in a Federal court, pending the review of an order of the Federal Power Commission reducing rates for wholesale natural gas service to distributing companies, belong to the eligible ultimate consumers of the several utilities reselling the gas and do not constitute the property of the distributing companies, p. 260.

By the COMMISSION: It appearing to the Commission that:

The Consumers Power Company, a corporation of the city of Jackson, Michigan, is a public utility company engaged in the local distribution and sale of natural gas within the state of Michigan, and that, under the laws of said state, the said utility company is, with respect to its said natural gas business, subject to the authority and jurisdiction of this Commission. Natural gas distributed and sold in all or a portion of the service area of said Consumers Power Company is purchased from Panhandle Eastern Pipe Line Company, hereinafter sometimes referred to as "Panhandle," pursuant to a contract between said companies.

Panhandle produces, purchases, and

gathers natural gas in the Amarille Field of the Texas Panhandle, and in the Hugoton Field in the state of Kansas, and transports the same in pipe lines into and through several states, including the state of Michigan. Panhandle is a "natural gas company" within the meaning of the Federal Natural Gas Act.

On February 28, 1941, the city of Detroit and the county of Wayne, Michigan, filed a petition with the Federal Power Commission, alleging that the wholesale gas rates and charges of Panhandle for natural gas sold to the Michigan Consolidated Gas Company for resale in the city of Detroit and the county of Wayne, were unjust, unreasonable, and unduly discriminatory. On its own motion, the Federal Power Commission instituted an investigation of all the interstate wholesale natural gas rates and charges of Panhandle, and consolidated the two proceedings for purposes of hearing.

The Michigan Public Service Commission, upon application, was permitted to intervene, and thereafter participated in said proceedings.

Extended hearings were held, resulting in an order of the Federal Power Commission, dated September 23, 1942, 3 Fed PC 273, 45 PUR (NS) 203, which order reduced the rates and charges of Panhandle for the transportation and sale of natural gas for resale for ultimate public consumption, so as to reflect a reduction of not less than $5,094,384 per year below its 1941 consolidated gross operating revenues of $17,789,573. The said order further required Panhandle to file with the Federal Power Commission, new schedules of rates and charges to reflect such reduction, which new schedules should be effective as of November 1, 1942. The Federal Power Commission reserved the right to reject all or any part of such new schedules as filed, and in lieu thereof, to prescribe other schedules.

On November 18, 1942, Panhandle filed a petition with the United States circuit court of appeals, eighth circuit, to review the order of the Federal Power Commission of September 23, 1942.

On December 7, 1942, said United States circuit court of appeals issued a stay order, a copy of which, marked "Exhibit A," is attached hereto and made a part hereof, which stay order, in part, provided for the impounding with the custodian of the court, of the monthly difference between the amounts to be paid to Panhandle by the various gas distributing companies purchasing gas under its then existing rates, and the amounts which said companies would be required to pay under the order of the Federal Power Commission. Under said stay order it was provided that such impounded funds were to be held by the custodian for the benefit of the ultimate consumers of said gas distributing companies or for the benefit of Panhandle, as would be determined in the litigation. It was further ordered that the entire expense of impounding, protecting, investing, and distributing the funds to said ultimate consumers or to Panhandle, should be borne by Panhandle.

On June 6, 1944, the said United States circuit court of appeals affirmed the order of the Federal Power Commission (Panhandle Eastern Pipe Line Co. v. Federal Power Commission, 54 PUR(NS) 26, 143 F2d 488). A writ of certiorari was granted by the

United States Supreme Court, which court, on April 2, 1945, affirmed the decision of the said United States circuit court of appeals (Panhandle Eastern Pipe Line Co. v. Federal Power Commission, 324 US 635, 89 L ed 1241, 58 PUR(NS) 100, 65 S Ct 821). During the pendency of such litigation, and continuing at present, funds have been paid by Panhandle 1, pursuant to said stay order, to the custodian appointed by the said United States circuit court of appeals, who is located in the city of Kansas City, Missouri, and that a very substantial sum, amounting approximately to $20,000,000, is now impounded, awaiting distribution to those persons, firms, and corporations legally entitled thereto.

Under date of May 24, 1945, Panhandle filed with the Federal Power Commission, its proposed new wholesale gas rate schedules. Until such schedules, or other schedules in lieu thereof, have been approved by said Federal Power Commission, the impounding of funds under said stay order will continue. After approval has been given to Panhandle's new schedule of rates and charges, it will be possible for the Federal Power Commission or said United States circuit court of appeals to allocate and determine the respective amounts of said impounded funds distributable to the various gas distributing companies and the ultimate consumers of such distributing companies, as their respective interests may appear.

[1] On February 12, 1945, the United States Supreme Court, in the case of Central States Electric Co. v. Muscatine, Iowa, 324 US 138, 89 L ed 801, 57 PUR(NS) 81, 86, 65 S Ct 565, held that the United States circuit court of appeals, seventh circuit, in a similar case and under similar circumstances, did not possess jurisdiction to determine the ownership of funds impounded pending an appeal from the Federal Power Commission's order under the Natural Gas Act, and that the determination of the relative rights of the gas distributing companies and their ultimate consumers should be made under state law. In its opinion, the court said:

"The ultimate consumers' rights being such as the law of Iowa affords, there is no reason for the payment of the fund to municipalities or municipal officers under a quasi trust for those found ultimately entitled, thus placing the burden on Central to pursue the cities or their officers for its recovery. An order to this effect is certainly not within the court's jurisdiction as a Federal court of equity. The most the court below should do, in view of the apparent controversy as to the consumers' right to a refund of rates heretofore paid to Central, is to order that the fund be held for a reasonable time to permit interested persons to litigate the issue in a tribunal having jurisdiction, the order to be conditioned that if such litigation is not instituted within a reasonable time, and prosecuted to final adjudication, the fund shall be paid over to Central, and that if it be adjudged, as a result of such litigation that Central is indebted to its consumers because of the reduction of wholesale rates in this proceeding, further application may be made to the court as to its disposition."

The issue before the Michigan Public Service Commission at this time is as to the ownership of that portion of the impounded fund allocable to the

Consumers Power Company, from the funds in the possession and under the control of the custodian appointed by the United States circuit court of appeals, eighth circuit.

Under and by virtue of the provisions of Act 3 of the Public Acts of 1939 this Commission has power and authority to hear and determine this issue.

The Commission finds and holds:

[2] 1. That the intent and purpose of Congress in enacting the Natural Gas Act was to protect the ultimate consumers from excessive natural gas charges by natural gas companies engaged in the transportation and sale of natural gas in interstate commerce for resale, and that the Panhandle Eastern Pipe Line Company is a natural gas company within the scope and meaning of said act.

[3] 2. That it is just and equitable that all sums allocable to said Consumers Power Company from the funds impounded by authority of the stay order of the United States court of appeals, eighth circuit, as a result of reduction in the wholesale gas rates of the Panhandle Eastern Pipe Line Company shall, when ascertained, and after deduction of all fees, costs and expenses of distribution not otherwise paid under order of said circuit court of appeals, and also after deduction of all taxes, if any, be distributed to the eligible ultimate consumers of said Consumers Power Company under the orders and direction of this Commission.

3. That the proceedings instituted by and before the Federal Power Commission with reference to the rates and charges of said Panhandle Eastern Pipe Line Company were commenced for the benefit of the eligible ultimate consumers of natural gas purchased for resale by the various gas distributing companies, including the Consumers Power Company.

4. That said amount to be allocated to said Consumers Power Company from said impounded funds, less all fees, costs, and expenses of distribution not otherwise paid under order of said circuit court of appeals, and also less all taxes, if any, belong to and are the property of the eligible ultimate consumers of natural gas of said Consumers Power Company, and that said Consumers Power Company is not entitled to any portion of such impounded funds hereby determined to belong to its eligible ultimate consumers, and that it has no proprietary interest therein.

Now, therefore, it is hereby *ordered:*

1. That the portion of the funds impounded under the stay order of the United States circuit court of appeals, eighth circuit, which will be allocated to the Consumers Power Company, after deducting therefrom all fees, costs, and expenses of distribution not otherwise paid under the order of said circuit court of appeals, and also after deducting all taxes, if any, is hereby determined to belong to and constitute the property of the eligible ultimate consumers of gas of said Consumers Power Company, and to not constitute the property of said Consumers Power Company or of Panhandle Eastern Pipe Line Company, and that neither of said companies shall be deemed to have any proprietary interest in such fund or any portion thereof.

2. That such portion of the impounded fund, after the deductions above specified, shall be distributed to

such ultimate gas consumers of the Consumers Power Company as this Commission shall find eligible, and in accordance with such method and plan as this Commission may, by order or orders hereafter made, determine to be just and reasonable.

3. The Commission reserves and retains jurisdiction of the matters herein contained, and the right to issue such further order or orders as circumstances may require, and as may be necessary, suitable, or appropriate in order to preserve, protect, and settle the rights of said Consumers Power Company, the natural gas consumers of said company, and of all other persons, firms, or corporations located within the state of Michigan, having or claiming to have rights or interests in said impounded funds.

EXHIBIT "A"

Stay Order

This matter comes before the court upon the petition of petitioners for an order of stay of the order of the Federal Power Commission, dated September 23, 1942, requiring reduction in rates and charges for gas furnished by petitioners; the pleadings filed thereto; the reply of the petitioners; various memoranda presented by the parties; and oral presentation by Glenn W. Clark and D. H. Culton, for petitioners; Harry S. Littman, for the Commission; Harold Goodman, for Wayne county; James H. Lee, for the city of Detroit; and Park Chamberlain, for Michigan Consolidated Gas Company.

Until further order of this court, the above order of the Federal Power Commission is stayed upon the conditions following:

1. The monthly difference between payments to petitioners under the existing rates or arrangements and those required under the order of the Commission shall be promptly paid over to John G. Hughes of Kansas City, Missouri, as the custodian of this court, not later than the twenty-fifth of the succeeding month, to be held by him for the benefit of the ultimate consumers or of petitioners as in this litigation may be determined entitled thereto. Such payments for months prior to this order shall be made by December 15, 1942. Triplicate receipts for each of such payments shall be given petitioners by the custodian, one of which shall be promptly filed, by petitioners, with the clerk of this court and one with the Federal Power Commission.

2. The entire expenses of impounding (including, among other things, protecting, investing, and distributing to petitioners or to ultimate consumers) of these funds shall be borne by petitioners. Whether any earnings on such funds (while so impounded) may be applied upon such expenses is reserved for future determination. When and as required by orders of this court, petitioners shall pay to the custodian such expense money, upon triplicate receipts, which shall be filed as above.

3. No interest shall be charged petitioners upon such impounded funds unless allowed upon application hereafter made by respondents or any of them. Such future applications may be made only (a) if and when petitioners fail to be ready to present this review upon the merits on May 14, 1943 (as set for hearing by a separate order entered as of this date), or (b) if and when this court shall enter its

decree or order sustaining the above order of the Commission and shall deny any petition for rehearing which may be filed thereto. Any interest allowed hereafter shall be at the rate of 4 per centum annually from the date of such allowance or thereafter as required by any orders of allowance.

4. Full power and jurisdiction is reserved to cancel or modify this order and to enter any other orders (with or without application of the parties) to protect or to promote the rights and interests of the parties to this litigation and of the ultimate consumers financially interested in the impounded funds.

It is *further ordered* that the clerk of this court is directed to transmit a copy of this order to each of the parties to this proceeding or to their above counsel.

NOTE.—The same rulings and orders were made in Re National Utilities Co. D–2448, Dec. 20, 1945; Re Michigan Consol. Gas Co. D–3109, Dec. 20, 1945; Re Battle Creek Gas Co. D–3156, Dec. 20, 1945.

NEW YORK PUBLIC SERVICE COMMISSION

Re Nassau & Suffolk Lighting Company

Case 10029
December 27, 1945

PROCEEDING *on Commission motion as to accounts of gas and electric company, original cost of property and depreciation existing therein; recommendations approved but order withheld pending action on consolidation of such company with other companies.*

Accounting, § 32 — Excess of securities issued over value of properties acquired.

1. An amount representing the difference between the par and face value of securities issued to finance the acquisition of properties of predecessor companies and the appraised value of the net intangible assets so acquired is not properly chargeable to the account Miscellaneous Intangible Plant, p. 272.

Accounting, § 31 — Street lighting extension cost — Abandoned service.

2. Costs incurred in connection with street lighting extensions are not properly chargeable to Miscellaneous Intangible Plant, but should have been eliminated and written off when the street lighting service was discontinued by the company, p. 272.

Accounting, § 23 — Franchise cost.

3. Expenses pertaining to a franchise are not properly chargeable to Miscellaneous Intangible Plant Account, p. 272.

Accounting, § 12.1 — Legal fees.

4. Miscellaneous legal and general costs of a gas and electric company are

not properly chargeable to Miscellaneous Intangible Plant where no benefit to the company, tangible or intangible, has been shown, p. 272.

Accounting, § 11.1 — Earned surplus account.

5. An item entered in Miscellaneous Intangible Plant Account which does not represent any definite asset or property upon the basis of cost or value which could be recognized for rate making, the issuance of securities, or corporate consolidation should be written off from the assets and charged against earned surplus, p. 272.

Accounting, § 21 — Financing cost — Retired stock.

6. Expenditures made by a company in connection with preferred stock that has been retired were improperly included in Plant Acquisition Adjustments Account, and should have been written off when the stock to which they related was retired, p. 275.

Accounting, § 21 — Financing cost — Unissued stock.

7. Expenditures in connection with additional common stock which a company did not issue should be transferred from Plant Acquisition Adjustments Account to Earned Surplus Account, p. 275.

Accounting, § 12.1 — Cost of acquiring contracts — Discontinued service.

8. Costs incidental to securing street lighting contracts should be transferred from Plant Acquisition Adjustments Account to earned surplus where the company no longer furnishes the street lighting service, p. 275.

Accounting, § 25 — Overheads — Interest during construction.

9. Charges for interest during construction and other overheads originally entered in fixed capital accounts but eliminated from original cost determinations, pursuant to Commission direction, as not proper elements of cost should be transferred from Plant Acquisition Adjustments Account to earned surplus, p. 275.

Accounting, § 56 — Excessive capitalization.

10. An amount representing a portion of excessive capitalization created when the company was organized should be transferred from Fixed Capital Account to earned surplus, p. 276.

Accounting, § 14 — Book cost of disappeared property.

11. An item representing the book cost of property which has disappeared but has not been eliminated from the company's fixed capital accounts should be charged to depreciation reserve, p. 276.

Depreciation, § 3 — Commission power — Annual allowance.

12. The Commission has power to investigate and determine proper annual depreciation charges and the amount of accrued depreciation actually existing at any one date, p. 282.

Depreciation, § 35 — Reserves — Duty of public utility company.

13. Every public utility company must provide adequately for depreciation before it has any divisible profits and before it may make any credits to surplus or to a Profit and Loss account out of which dividends are declared, p. 282.

Accounting, § 31 — Partially used and useful property.

Statement that a public utility company's Plant in Service account includes the original cost of units of property which are partially used and useful when the portion which is still used is not separable from that which is not

used and useful, until the original cost of the used and useful property is determined as of a certain date for rate-making purposes, p. 283.

APPEARANCES: Gay H. Brown and Philip Halpern, Counsel (by George E. McVay and Martin J. Eagan, Assistant Counsel), for the Public Service Commission; Charles G. Blakeslee, New York city, General Counsel, Nassau and Suffolk Lighting Company; Edward J. Crummey, Mineola, Long Island, Attorney, for Nassau and Suffolk Lighting Company; Callaghan, Stout and Nova (by Stephen Callaghan and Thomas A. Gaffney), New York city, Special Counsel, for Nassau and Suffolk Lighting Company; Marcus G. Christ, County Attorney (by John M. Mitchell, Deputy County Attorney), for the county of Nassau.

MALTBIE, Chairman: This proceeding was initiated by the Commission for the purpose of examining the accounts, books, and records of the Nassau and Suffolk Lighting Company and determining the original cost of the property employed in the service of the public and the existing depreciation thereon. Although a considerable period of time elapsed between the initiation of the proceeding and the closing of the hearings (the reasons for which will be discussed elsewhere in this memorandum), the record in this case consists of only 543 pages of stenographic minutes and 30 exhibits, not including certain annual reports of both the Nassau and Suffolk Lighting Company and the Long Beach Gas Company which were made a part of the record by reference.

History of Company

Although the Nassau and Suffolk Lighting Company supplies both gas and electricity in a part of Nassau county, Long Island, it is predominantly a gas corporation. Less than one per cent of its property is devoted to the rendition of electric service and over 99 per cent of its revenues are obtained from the sale of gas. It was incorporated on May 13, 1905, with a proposed capitalization of $1,000,000 consisting of common stock with a stated value of $500,000 and first mortgage bonds with a face value of $500,000. When the company was organized, it was not in possession of any physical property and practically all of its securities were issued to acquire the outstanding securities of Nassau County Gas Company, Nassau Illuminating and Power Company and South Shore Gas Company of Freeport. Thereafter, on January 3, 1906, certificates of merger dated December 30, 1905, were filed with the secretary of state merging these three companies into the Nassau and Suffolk Lighting Company.

The present outstanding capital stock of the Nassau and Suffolk Lighting Company consists of 27,262 shares of 7 per cent preferred stock having a total par value of $2,726,200, and 10,000 shares of common stock with a par value of $1,000,000—an aggregate par value of $3,726,200. Dividends are in arrears on the preferred stock to the extent of $1,867,447 (over 68 per cent) as of June 30, 1945, and no dividends have been declared or paid on the common stock since 1933. In addition, the company has outstanding $3,000,000 principal amount of first

mortgage 3⅛ per cent bonds due in 1949 which were authorized by this Commission on December 29, 1944.

The Nassau and Suffolk Lighting Company is a part of the Long Island Lighting Company system. All of its outstanding common stock was acquired in 1927 by the Queens Borough Gas and Electric Company, this latter company in turn being controlled directly by the Long Island Lighting Company. The Queens Borough Gas and Electric Company paid $342.02 per share for this stock and is now carrying such stock at an asset value of $3,420,200. This is $2,420,200 in excess of the par value of the stock, which is already impaired to the extent of 100 per cent as will be shown later.

History of Proceeding

Although the books and records of the Nassau and Suffolk Lighting Company have been examined several times in the past in connection with certain capitalization matters and in connection with the acquisition of its common stock by the Queens Borough Gas and Electric Company, this is the first proceeding in which the original cost of the property devoted to the service of the public, as well as the actual depreciation existing thereon, have been determined in accordance with sound principles. After this proceeding was originated, the first hearing was held on October 27, 1939, and adjourned without date pending completion of the studies being undertaken by the Commission's staff and company representatives on the matters involved.

The first hearing at which evidence was offered on the results of the examinations made by the staff of the Commission and on the issues that had not been settled in conference between the staff and the company representatives, was held on October 17, 1940. At that time, Mr. Mylott and Mr. Hine of the Commission's staff presented evidence on original cost and depreciation existing in the company's property as of January 1, 1938, and as to other adjustments necessary to conform the balance sheet accounts to the requirements of the uniform system of accounts effective on the same date. At subsequent hearings, company representatives submitted testimony on certain matters where differences existed with the Commission's staff.

One of the principal differences existing between the claims of the Commission's staff and the company representatives was the propriety of including the charges for E. L. Phillips and Company fee as a proper part of the original cost of the company's property. This particular item had been excluded several times by the Commission in determining the original cost of the used and useful property for the purpose of fixing the rates of various companies in the Long Island Lighting Company system. Mr. Mylott followed the Commission's rulings on this matter in Case 6093, Re Long Island Lighting Co. (1936) 1 Ann Rep NYPSC 788, 18 PUR(NS) 65; Case 6983, see Citizens' Committee v. Kings County Lighting Co. PUR1933B 147, 151; also 1 Ann Rep NYPSC 1937, p 374, and Case 8403, Re Queens Borough Gas & E. Co. (1939) 1 Ann Rep NYPSC 707, 32 PUR(NS) 71, and eliminated said charges in determining the original cost of the property. On the other hand, the company contended that up to the time of the hearings in this pro-

ceeding the Commission had not made any determination as to the propriety of including this item as a good asset.

This same question was also pending in cases affecting other companies in the Long Island Lighting system. To simplify matters and avoid the expense of several suits, it was decided to select one of the companies as a test case, introducing into the record in that case all testimony relative to the matter. This was done in Case 10198 involving the Long Beach Gas Company (1941) 38 PUR(NS) 1, and in that proceeding the company was afforded an opportunity to present all the evidence it desired to submit on this subject in order that a final determination could be made. For this reason the following ruling was adopted by the Commission when an attempt was made to transfer the evidence on this subject from the Long Beach Case to this proceeding:

"The Commission has decided that inasmuch as the identical testimony would be received if the motions were granted in the Long Beach Case and as the cases are similar in character and as a decision on this testimony is to be made in the Long Beach Case, the Commission sees nothing to be gained by the repetition of the identical testimony in repeated cases involving the same interests and the same question. Consequently the motions for the introduction of the testimony regarding the Phillips fee made by counsel for the Nassau and Suffolk Company are denied."

The hearings in this proceeding were adjourned on December 21, 1940, to permit a finding on the question of Phillips fee. On March 17, 1941, *supra,* the Commission issued an order in Case 10198 with a memorandum reviewing the testimony offered and stating the reasons why the Phillips fee should not be a part of the cost of the property, should be eliminated from the assets and should be charged to surplus. Appeal was taken by certiorari to the appellate division, third department, of the state supreme court and upon July 1, 1942, a decision was handed down sustaining the order of the Commission (Long Beach Gas Co. v. Maltbie 264 App Div 496, 46 PUR(NS) 393, 36 NY Supp2d 194). Appeal from this decision was taken by the company to the court of appeals and upon February 25, 1943, 290 NY 572, 48 NE2d 167, that tribunal unanimously sustained the decision of the appellate division.

In view of the time that had elapsed between the date of the original studies made by the Commission's staff (January 1, 1938) and the date of the opinion by the court of appeals upholding the Commission's contention with respect to the Phillips fee, the staff was directed to bring its figures forward to a later date.

On June 13, 1945, the hearings were resumed and the results of the original cost studies made by the staff of the Commission as of December 31, 1943, were submitted. In the meantime, it was brought to the attention of the Commission that a reorganization plan was under consideration which contemplated the consolidation of the companies of the Long Island system with the exception of the Kings County Lighting Company. It was therefore deemed advisable that the figures relating to the Nassau and Suffolk Lighting Company be brought down to the latest date possible, and

the staff was directed to bring its studies forward to June 30, 1945. This was done and on July 31, 1945, the results of such studies were introduced in evidence in this proceeding and the hearings closed.

Comparative Balance Sheets

The reported balance sheets of the company as of each of the dates involved in the studies presented in this proceeding are set forth in Table 1. The figures shown for January 1, 1938, are the balances for the various accounts reclassified to conform to the uniform system of accounts effective on that date. Although many changes have been made in the accounts of the company during this 7½-year interval, further revisions are necessary before they are placed on a sound and proper basis. Before considering these adjustments, however, it seems desirable to discuss some of the principal changes in the accounts as reported by the company.

According to Table 1, the most important fluctuations in the assets during the period are found in the group of utility plant accounts. The reclassified balance for gas plant in service as of January 1, 1938, amounted to $8,896,694.24 and increased to $9,258,290.26 as of December 31, 1943. During this 6-year period, the net additions to gas plant were $814,035.54 but transfers to other balance sheet accounts modified the net increase for gas plant in service to $361,596.02. One transfer relates to the elimination of $98,814.55 for Phillips fee from the gas plant accounts as of December 31, 1943, and a corresponding charge against earned surplus. This write-off was made by the company pursuant to the requirements of an order adopted by the Commission in this proceeding on February 1, 1944. Another large adjustment pertains to a transfer of $351,392.83 to gas plant acquisition adjustments account which was recorded in 1942 when the company modified its original cost determinations to agree with the study prepared by Mr. Mylott for all property accounts except miscellaneous intangible gas plant. As a result of this transfer the balance in gas plant acquisition adjustments account was increased to the amount shown in Table 1. Minor transfers of about $2,232.14 were also made during this same period, thus accounting for the net increase in gas plant in service between January 1, 1938, and December 31, 1943.

Between January 1, 1944, and June 30, 1945, the recorded changes in gas plant in service were as follows:

Gross additions	$50,530.16
Retirements (credit)	30,525.94
Transfers	6,651.88
Adjustments (credit)	516,350.84
Net reduction	$489,694.74

The adjustments shown above consist of two items, (1) a charge to gas plant of $2,644.88 for the restoration of gas services previously retired and (2) a reduction in gas plant accounts of $518,995.72 for contributions made by customers toward the construction and acquisition of property still in existence as of January 1, 1945. This latter reduction was made pursuant to an amendment to the uniform system of accounts effective January 1, 1945. At the same time, $19,063.69 of contributions were transferred to gas plant held for future use and $81,045.09 to reserve for depreciation of gas plant, thereby eliminating the bal-

ance appearing in the contribution account as shown in Table 1.

The amounts shown in Table 1 opposite gas plant held for future use represent the original cost of gas mains and gas services that were not in the service of the public on the dates indicated, the balance as of June 30, 1945, consisting of $3,855.24 for mains and $47,721.70 for services. Prior to May 1, 1940, inactive gas services were included with gas plant in service, but thereafter, pursuant to an amendment to the uniform system of accounts, the company transferred the original cost of such property temporarily out of service to this account. When again placed in use the original cost will be reinstated in gas plant in service, and this procedure largely accounts for the change in gas plant held for future use between December 31, 1943, and June 30, 1945.

According to Table 1, current and accrued assets increased over $210,000 between January 1, 1938, and Decem-

TABLE 1
Comparative Balance Sheets, 1938–1945

Assets and Other Debits	January 1, 1938	December 31, 1943	June 30, 1945
Electric plant in service	$78,621.56	$71,237.08	$71,488.04
Gas plant in service	8,896,694.24	9,258,290.26	8,768,595.52
Construction work in progress	812.99	22,580.48	36,888.90
Gas plant held for future use	..	77,376.80	51,576.94
Electric plant acquisition adjustments	112,851.10	115,961.93	115,961.93
Gas plant acquisition adjustments	291,350.61	636,584.98	636,584.98
Total utility plant	$9,380,330.50	$10,182,031.53	$9,681,096.31
Other physical property	$76,288.93	$68,788.43	$68,788.43
Investments in associated companies	322,500.00	335,044.31	322,772.21
Sinking funds	1,025.42	87,417.50	..
Total investment and fund accounts	$399,814.35	$491,250.24	$391,560.64
Cash	$97,084.39	$311,241.77	$323,367.16
Special deposits	787.50	3,353.11	1,448.38
Working funds	8,947.03	7,200.00	11,200.00
Notes receivable	..	13.08	..
Accounts receivable	289,868.85	205,936.43	183,072.76
Receivables from associated companies	46,784.92	4,110.36	40,064.02
Materials and supplies	124,103.09	262,518.59	218,159.83
Prepayments	25,876.38	7,270.74	5,885.35
Other current and accrued assets	..	2,958.80	1,610.19
Total current and accrued assets	$593,452.16	$804,602.88	$784,807.69
Unamortized debt discount and expense	$224,388.22	$29,269.26	..
Clearing accounts	87.16	7,619.85 Cr	$2,888.81 Cr
Preliminary survey and investigation charges	..	..	1,903.37
Retirement work in progress	..	240.49	1,040.20
Other work in progress	..	14.61	4,600.86
Other deferred debits	77,777.57	..	24,964.25
Total deferred debits	$302,252.95	$21,904.51	$29,619.87
Capital stock expense	$321,176.83	$321,176.83	$321,176.83
Total	$10,997,026.79	$11,820,965.99	$11,208,261.34

Cr=Credit.

TABLE 1—*Continued*

Liabilities and Other Credits	January 1, 1938	December 31, 1943	June 30, 1945
Common capital stock	$1,000,000.00	$1,000,000.00	$1,000,000.00
Preferred capital stock	2,726,200.00	2,726,200.00	2,726,000.00
Total capital stock	$3,726,200.00	$3,726,200.00	$3,726,200.00
Long-term debt	$3,517,500.00	$3,086,500.00	$3,000,000.00
Advances from associated companies	$1,906,474.52	$1,906,474.52	$2,086,225.52
Notes payable	$300,000.00	..	..
Accounts payable	53,482.18	$79,884.35	$47,759.40
Dividends declared	..	15.00	15.00
Payables to associated companies	45,539.62	14,604.60	67,905.27
Matured interest	662.50	1,975.00	..
Customers' deposits	349,111.67	347,349.81	281,532.53
Taxes accrued	41,188.00	71,046.44	4,495.27
Interest accrued	85,263.78	69,125.59	45,144.87
Other current and accrued liabilities	..	14,991.14	17,085.25
Total current and accrued liabilities	$875,247.75	$598,991.93	$463,937.59
Customers' advances for construction	$63,617.64	$13,461.51	$12,273.48
Other deferred credits	..	166.36	107.00
Total deferred credits	$63,617.64	$13,627.87	$12,380.48
Reserve for depreciation of electric plant	$4,722.82	$8,823.89	$13,130.84
Reserve for depreciation of gas plant	253,944.79	1,196,362.04	1,521,476.24
Reserve for depreciation of gas plant held for future use	..	9,065.65	10,390.85
Reserve for depreciation and amortization of other property	2,117.58	4,167.31	5,637.73
Reserve for uncollectible accounts	37,845.65	22,290.42	25,330.77
Other reserves	150,000.00	..	..
Total reserves	$448,630.84	$1,240,709.31	$1,575,966.43
Contributions in aid of construction	$297,607.36	$619,104.50	..
Earned surplus	$161,748.68	$629,357.86	$343,551.32
Total	$10,997,026.79	$11,820,965.99	$11,208,261.34
Note: Dividends accrued and unpaid on 7 per cent cumulative preferred stock	$627,026.00	$1,581,196.00	$1,867,447.00

ber 31, 1943, and then dropped off about $20,000 as of June 30, 1945. The increase in this group of accounts during the period was due mainly to the growth in the cash balance and in materials and supplies. During the war, very little new construction work was done by the company and its cash resources increased over $265,000 between December 31, 1941, and June 30, 1945. During the same period, the company augmented its reserve stocks of oil, coke, and coal and its materials and supplies increased from about $134,000 as of December 31, 1941, to a peak of over $262,000 at December 31, 1943; thereafter the balance declined to about $218,000 at June 30, 1945.

The refunding of the company's long-term debt, authorized by an order of the Commission dated December 29, 1944, in Case 11692, Re Nassau & S. Lighting Co. 56 PUR(NS) 265,

eliminated the unamortized debt discount and expense pertaining to the bonds refunded. For this reason, there is no amount shown opposite unamortized debt discount and expense as of June 30, 1945, in Table 1. The expenses incurred in connection with the issuance of the new bonds amounted to $24,964.25 and is temporarily included in account "Other deferred debits." After such expenses have been approved by the Commission, the portion to be amortized over the life of the new bonds will be transferred to unamortized debt discount and expense.

Long-term debt was reduced $517,500 during the period from January 1, 1938, to June 30, 1945. This reduction was brought about through the operation of the sinking fund provided for in the indenture securing the issuance of the 5 per cent first mortgage bonds which were refunded in January, 1945.

The large balances shown for advances from associated companies in Table 1 represent amounts due by Nassau and Suffolk Lighting Company to its parent, Queens Borough Gas and Electric Company, on the dates indicated. The balance as of January 1, 1938, of $1,906,474.52 consists of $1,479,889.10 due on open account and $426,585.42 for unpaid interest on the open account.

The history of this debt, which dates back to 1927, was discussed at considerable length in a memorandum approved by the Commission on December 1, 1938, in Case 8403. Briefly, the amount due on open account includes charges for gas and electricity purchased from the Queens Borough Company, charges for labor, material, and sundry items furnished by that company, cash advances and debts of the Nassau and Suffolk Lighting Company to E. L. Phillips and Company, and other companies in the Long Island Lighting system which were assumed by the Queens Borough Gas and Electric Company. The amount due for unpaid interest represents accruals from 1930 on the balance in the open account at the rate of 6 per cent to November 1, 1934, and 4 per cent to December 31, 1937. Thereafter, the interest rate was reduced to 3½ per cent and paid currently.

During the 7½-year period prior to June 30, 1945, the balance due the Queens Borough Company increased $179,751. This amount represents the additional cost of gas purchased between October 1, 1941, and December 31, 1943, which the Nassau Company was required to pay the Queens Borough Company pursuant to a judgment in the case entitled "Chelrob, Inc. v. Barrett."

In that proceeding, certain preferred stockholders of the Queens Borough Gas and Electric Company sought an accounting of profits claimed to have been improperly made by the Long Island Lighting Company and the Nassau and Suffolk Lighting Company, and to recover losses sustained by the Queens Borough Gas and Electric Company and the Nassau and Suffolk Lighting Company upon the intercompany sales of gas. At the conclusion of the trial in November, 1941, the trial court held that the Nassau and Suffolk Lighting Company was not entitled to recover for any inadequacy of the price it received from the gas sold to Long Island Lighting Company but rendered judgment in

favor of the plaintiffs for losses sustained on the sale of gas to the Nassau and Suffolk Lighting Company, directing the judgment be paid by this company. Appeal was taken and the appellate division reversed the decision of the trial court. (See [1943] 265 App Div 455, 266 App Div 669, 48 PUR(NS) 524, 39 NY Supp2d 625.) Thereafter, the plaintiffs appealed to the court of appeals and late in 1944 the court found in their favor. (See 293 NY 442, 56 PUR(NS) 284, 57 NE2d 825.)

The judgment (exclusive of interest) represented the additional price which the court held the company should pay on gas purchased from Queens Borough Gas and Electric Company prior to October 1, 1941, and this judgment was actually paid by the Nassau and Suffolk Lighting Company. However, the additional cost of the gas purchased between October 1, 1941, and December 31, 1943, computed on the basis of the court's opinion and totaling $179,751 was not paid to Queens Borough Gas and Electric Company; it was entered as an advance from associated companies.

On January 1, 1938, the reported balance in the depreciation reserves for electric and gas property amounted to about $260,000 and was equivalent to less than 3 per cent of the reported book cost for such property. On December 31, 1943, the balance in these reserves had grown to approximately $1,205,000 and as of January 30, 1945 it aggregated about $1,535,000. Although these reserves have increased over $1,275,000 during the 7½-year period, the depreciation actually existing in the property is substantially in excess of the book reserves. This subject will be discussed in connection with the adjustments that should be made in the balance sheet accounts of the company as of June 30, 1945.

Balance Sheet Adjustments

In the study of the company's accounts as of January 1, 1938, Mr. Mylott proposed a number of revisions to bring them into accord with the uniform system of accounts and with sound accounting principles. Before the data shown in his original study were brought forward to December 31, 1943, the company recorded three of the adjustments on its books involving a net charge of $97,748.33 against earned surplus. These corrections consisted of the following items:

Charges to earned surplus:	
1. Write-off of inventory and appraisal expense and Baldwin explosion costs included in account "Other deferred debits"	$77,708.56
2. Transfer of contributions in aid of construction to proper account	170,039.77
Total	$247,748.33
Credit to earned surplus:	
3. Transfer of indebtedness forgiven by Queens Borough Gas and Electric Company and included in account "Other reserves"	150,000.00
Net charge	$97,748.33

There remain, however, several corrections proposed by Mr. Mylott which the company had not entered in its accounts by June 30, 1945. These involve charges of $1,660,733.39 against earned surplus and $45,449.99 against the gas plant depreciation reserve. The charge to the depreciation reserve reduces the company's assets by an equivalent amount, and $1,530,965.47 of the charge against earned surplus covers eliminations from the asset ac-

counts and $129,767.92 represents a transfer to gas plant depreciation reserve. The proposed corrections are as follows:

Charges to earned surplus:	
From gas plant in service	
1. Balance in the account "Miscellaneous intangible capital"	$501,369.55
From electric and gas plant acquisition adjustments	
2. Organization expense	73,613.94
3. Interest during construction	191,773.87
4. Other overheads	217,997.16
5. Land—Garden City purchase	92,500.00
6. Write-up due to reappraisal	22,609.22
7. Maintenance and inventory adjustments	108,602.73
From investments in associated companies	
8. Impairment of investment in Long Beach Gas Company preferred stock	322,499.00
From reserve for depreciation of gas plant	
9. Elimination of erroneous charge for "Expenses to be amortized"	129,767.92
Total	$1,660,733.39
Charges to reserve for depreciation of gas plant:	
From gas plant acquisition adjustments	
10. Retirements of gas property not entered in plant accounts	45,449.99
Total	$1,706,183.38

[1–5] There is considerable difference between the testimony presented by the staff of the Commission and the company's contentions with respect to Item 1 in the preceding summary. Mr. Mylott testified that the amount of $501,369.55, which is entered on the company's books in the primary gas plant in service account "Miscellaneous intangible plant," does not represent expenditures that are proper charges to the account under the requirements of the uniform system of accounts and should be written off against earned surplus. The principal claim by the company seems to be that as the Commission was aware that this balance had been carried on its books and records since 1906 and as it had not been ordered written off before, it was a proper charge to miscellaneous intangible plant and should be allowed to stand. But what are the facts connected with this item?

When the company was organized in 1905, it issued securities having a par and face value of $1,000,000. These securities were issued to acquire the securities and property of three predecessor companies, all of which were merged into the Nassau and Suffolk Lighting Company as of December 30, 1905. In recording the property of the three predecessor companies on its books and records, Nassau and Suffolk Lighting Company entered the net tangible assets at $286,806.30 and distributed the difference of $713,193.70 to various intangible items. Of the difference, $498,779.39 was assigned to the account "Franchise Rights, Goodwill, etc., Nassau and Suffolk Lighting Company." This amount was subsequently transferred to the account "Other intangible gas capital," and when the present uniform system of accounts became effective January 1, 1938, the balance in this account was reclassified as "Miscellaneous intangible plant."

The remainder of the difference, or $214,413.31, was entered in other accounts on the company's records and ultimately written off against surplus with the exception of $92,500 which now appears in gas plant acquisition adjustments account (Item 5 in the preceding summary). Miscellaneous expenditures made by the company be-

tween 1906 and 1916 of $2,590.16 increased the balance of $498,779.39 to $501,369.55, the amount now appearing in the gas plant account "Miscellaneous intangible plant."

It is obvious from the very nature of the items involved that they do not represent proper charges to the account "Miscellaneous intangible plant" as permitted by the present uniform system of accounts which provides for the following costs:

"A. This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of the utility's gas operations and not specifically chargeable to any other account."

No part of the amount in question represents the cost of "patent rights, licenses, privileges, and other intangible property." With the exception of $2,590.16, the entire amount represents part of the difference between the par and face value of securities issued and the "appraised value" of the net intangible assets acquired from the three predecessor companies. The miscellaneous expenditures made after the formation of the company and included in the total were for costs incurred in connection with street lighting extensions, expenses pertaining to a franchise, and miscellaneous legal and general costs.

The company no longer renders gas street lighting service, and the charges relating thereto should have been eliminated and written off when that type of service was discontinued.

Expenditures connected with franchise matters are not chargeable to miscellaneous intangible plant. Under § 69 of the Public Service Law, a utility company is prohibited from capitalizing any amount in excess of payments to the state or to a political subdivision thereof for a franchise. Under the requirements of the systems of accounts, such amounts are properly chargeable to Account 302 — "Franchises and Consents" as are the necessary and reasonable expenses incidental to securing the franchise. The amount in question here is said to have been for "expenses—re franchise at Merrick." No proof was offered by the company that it received a franchise as a result of this payment or that it has a franchise in "Merrick." In fact, it is believed that there is no political subdivision known as "Merrick." The charges said to relate to "franchise matters" should be written off against earned surplus.

No information is available from the company's books as to the nature of the "legal and general expenses" included in this account. No benefit to the company, tangible or intangible, has been shown. This item has not been substantiated.

The only claim that might merit some consideration is that the item of $498,779.39 is properly includible in the account "Gas plant acquisition adjustments." The provision of the system of accounts dealing with this amount is:

"A. With respect to gas plant acquired prior to January 1, 1938, and still in service, leased to others, and held for future use at that date, this account shall include the difference between the book cost thereof as of December 31, 1937, and the original cost thereof when such difference is not clearly includible in any other ac-

count, unless otherwise ordered by the Commission."

However, before this provision may be invoked there are a number of factors that must be considered. If the issuance of securities by the Nassau and Suffolk Lighting Company for the acquisition of the securities and property of the three predecessor companies were a transaction at "arm's-length bargaining" and if the par and face value of the securities issued represented their real value, it might be claimed with some merit that the difference of $498,779.39 was a proper charge to gas plant acquisition adjustments account. But there is no evidence in the record to establish such a condition; and in view of the practices of company formation and financing common at that time, no one is warranted in assuming such an unusual condition. The burden of proof is certainly upon the company to prove a proper basis for such a charge for such intangible items as franchises, licenses, patents, and other privileges. However, the company has not claimed that any part of the amount involved should be included in gas plant acquisition adjustments account; and there is factual basis for finding that it represents any real cost or value.

There is one other point connected with this item. In a minority memorandum dated February 4, 1938, in Case 3927, 22 PUR(NS) 289, considerable discussion was devoted to the propriety of including this item as representing an element which would add to the value of the common stock of the Nassau and Suffolk Lighting Company. In that proceeding, a determination was being made as to the value of the common stocks of the Nassau and Suffolk Lighting Company and the Long Beach Gas Company, both of which had been acquired by the Queens Borough Gas and Electric Company at an excessive price. It was there held that the balance of $501,369.55 in the account "Miscellaneous intangible capital" should not be considered in determining the book value of the common stock of the Nassau and Suffolk Lighting Company and this conclusion was not disturbed in the majority memorandum in that case which was approved by the Commission on February 9, 1938.

Considering all the available facts, it is clear that the amount in question does not represent any definite asset or property upon the basis of cost or value which should be recognized for rate making, the issuance of securities, or corporate consolidation. The entire amount should be written off from the assets and charged against earned surplus as proposed by Mr. Mylott.

Items 2 to 7 inclusive and Item 10, aggregating $752,546.91, are included in the accounts "Electric plant acquisition adjustments" and "Gas plant acquisition adjustments," $115,961.93 being charged to the former and $636,584.98 to the latter (see Table 1, *supra*). The total, which is made up of the elements shown in the preceding summary, represents the difference between the book cost of the company's property and the original cost as determined and agreed upon by the staff of the Commission and company representatives.

Mr. Mylott testified that in his opinion none of these items was properly includible in acquisition adjustments accounts and proposed charging $707,-

096.92 (Items 2 to 7 inclusive) and $45,449.99 to the reserve for depreciation of gas plant for Item 10. The company offered no testimony or evidence as to the propriety of retaining any of these items in the accounts to which they are now charged. Further, if they are proper charges to such accounts, the company is required to submit a program for the amortization or disposition of such items as provided in the uniform system of accounts. This it did not do, and it will be necessary, therefore, to consider and dispose of each separately.

[6-8] Item 2, amounting to $73,613.94, includes expenditures formerly charged by the company to organization account and subsequently transferred to acquisition adjustments when the accounts were reclassified as of January 1, 1938. An examination of these expenditures discloses that they are not properly includible in the acquisition adjustments account and should be written off. For example, $8,919.75 represents expenditures made by the company in connection with 6 per cent preferred stock that has been retired. These expenses should have been written off when the stock to which they relate was retired. Expenditures of $125.80 in connection with additional common stock which the company did not issue are also included. Obviously, this is not a proper charge to assets. Likewise, costs incidental to securing street lighting contracts, amounting to $61,045.89, as the company does not furnish gas for street lighting. The last item included is $3,522.50 for miscellaneous expenditures in connection with various capitalization matters. The record does not indicate any justifiable purpose for which these expenditures were made. Thus the entire amount of $73,613.94 should be eliminated from the asset accounts and charged to earned surplus.

[9] Items 3 and 4 totaling $409,771.03 will be considered and disposed of together. They represent charges for interest during construction and other overheads which were formerly entered in the fixed capital accounts but eliminated from the original cost determinations for gas plant and electric plant by the staff of the Commission and the company's representatives as not proper elements of cost according to the provisions of the uniform systems of accounts. The amounts involved for each item and the allegation that they are not proper charges to plant in service are not in dispute, but there is a difference of opinion as to their disposition. The company transferred both amounts to acquisition adjustments accounts; Mr. Mylott recommended that they be written off against earned surplus. The requirements of the systems of accounts prohibit their inclusion in the adjustments account; and since no proof has been offered that they are not properly chargeable to any other balance sheet account, they should be transferred to earned surplus.

Item 5 designated as "Land — Garden City purchase" is in the same category as Item 1. It represents a portion of the difference between the par and face value of the securities originally issued by the Nassau and Suffolk Lighting Company and the amount recorded for the net tangible assets acquired from the three predecessor companies. Originally, $162,369.80 were assigned to this item, but

the company subsequently transferred $69,869.80 to surplus in 1908, leaving $92,500 which it transferred to land account and subsequently charged to plant acquisition adjustments account. There is no testimony that this item represents any property value and as it is not properly chargeable to acquisition adjustments account, it must be written off against earned surplus.

[10] Item 6 ($22,609.22) designated "Increased value due to reappraisal" represents the amount in excess of original cost assigned to various property items in 1906 and still in the fixed capital accounts of the company on January 1, 1938. This amount is in reality a portion of the excessive capitalization created when the company was organized. It was originally included in the account known as "Cost of reorganization and rehabilitation," transferred to another account, "Development fund," and finally entered in the fixed capital accounts. It is similar to Items 1 and 5 and should be treated in a similar manner.

[11] Item 10 ($45,449.99) represents the book cost of property that has disappeared but had not been eliminated from the company's fixed capital accounts as of January 1, 1938. The company transferred this amount to the acquisition adjustments account, but Mr. Mylott recommended that it should be charged against the depreciation reserve for gas plant. Although he did not know the date when the property was actually retired, he stated that a study disclosed the balance after correcting for the erroneous transfer of $129,767.92 (Item 9), in the gas plant depreciation reserve and in the predecessor reserves prior to 1938 was sufficient at all times to provide for the retirement of such property. This procedure, which is consistent with the policy followed by the Commission in the past, is in accord with the law enunciated by the appellate division and upheld by the court of appeals in the Long Beach Gas Company Case (1942) 264 App Div 496, 46 PUR(NS) 393, 36 NY Supp2d 194; (1943) 290 NY 572, 48 NE2d 167. Therefore, Item 10 should be charged to the depreciation reserve for gas plant.

The difference between the book cost of the property and the original cost determinations which could not be definitely labeled amounted to $108,602.73 (Item 7). This balance consists principally of maintenance expenditures which the company had erroneously charged to fixed capital prior to January 1, 1938 and other charges for property not appearing in the inventory. According to the testimony a complete breakdown of this amount by types of items could not be made from company records. The amount does not represent expenditures which are properly includible in the acquisition adjustments account and should be transferred to earned surplus.

The uniform system of accounts provides that a utility may write down the cost of any security it owns in recognition of a decline in the value of the security. It also provides that "Securities *shall* be written off or written down to a nominal value if there be no reasonable prospect of substantial value." In compliance with this mandatory provision, Mr. Mylott recommended that the investment of $322,500 in the Long Beach Gas Company

preferred stock be written down to $1 (Item 8). In support of his recommendation, he prepared and submitted calculations showing the book value of this preferred stock as of January 1, 1938, December 31, 1943, and June 30, 1945. These tabulations show that on the basis of the figures reported by the Long Beach Gas Company and modified only by the elimination of items not representing real assets, the preferred stock of the Long Beach Gas Company had no book value. For example, the liabilities of the company exceeded the assets by $10,708.10 as of January 1, 1938. The excess as of December 31, 1943, was $341,195.83, and as of June 30, 1945, it amounted to $342, 240.25.

The only contention made by the company with respect to Item 8 was that Mr. Mylott had erroneously excluded certain asset items as of January 1, 1938, which, if considered, would have resulted in a book value for the Long Beach preferred stock of $55,650.56. The items which the company claims should be considered consist of $140,256.08 for unamortized debt discount and expense, $9,782.85 for capital stock expense, $32,829.52 for plant acquisition adjustments, $9,706.31 for E. L. Phillips and Company fee, and $25,000 for organization costs. None of these represents an asset of real value. They may have represented expenditures at some time, but do not now represent any property values.

Further, the company did not make a similar claim in connection with the calculations as of December 31, 1943, and June 30, 1945. Subsequent to January 1, 1938, the Phillips' fees and plant acquisition adjustments were written off by the Long Beach Gas Company against earned surplus. The organization item was held as a proper charge for organization expense by the appellate division and has been included in Mr. Mylott's determinations at the two latter dates. Over 50 per cent of the debt discount and expense has been eliminated since 1938 from the assets and charged against earned surplus. Even if the unamortized portion were considered as an asset of value in the determination as of June 30, 1945, the excess of the liabilities over the assets would be reduced from about $342,000 to about $270,000 but the preferred stock would have no book value.

The investment in the Long Beach Gas Company preferred stock was made by the Nassau and Suffolk Lighting Company in 1926, and during the 20-year period it owned this stock it never received any dividends. The possibility of earning a return on any part of this investment is extremely remote. The Long Beach Gas Company had a deficit of nearly $690,000 as of June 30, 1945. This amount exceeds the total stated capital of the company by over $267,000 and if a reorganization of the Long Beach Gas Company were now undertaken the present common and preferred stockholders would not be entitled to any share in the reorganized company.

The preferred stock of the Long Beach Company should either be written down to $1 as proposed by Mr. Mylott with a charge against surplus of $322,499 or a reserve created from earned surplus of $322,499. The net result is the same by either method.

The last correction proposed by Mr. Mylott is for Item 9 which calls for

the reinstatement of $129,767.92 in the reserve for depreciation of gas plant. This amount represents the balance that appeared in the former account "Accrued amortization of capital" which the company eliminated as of December 31, 1923, by a transfer from the asset account, "Suspense to be amortized." This was in effect the same as transferring the balance from the amortization reserve to surplus. The suspense account had originally been set up to enable the company to write-off over a period of years charges connected with the development of the company's business such as promotion expenses, salaries, rentals, etc. The Commission had diretced that these charges be written off as income deductions during the years 1923 to 1944 but permitted the company to accelerate this amortization program if it so desired. The effect of the company's action was to take out of a reserve built up out of operating expenses an amount to amortize a sum which the Commission had directed should be taken out of income deductions. The Commission did direct the company to amortize these charges against accrued amortization of capital and this improper diversion of an amount that had been built up out of operating expenses should be corrected as proposed by Mr. Mylott through a charge of $129,767.92 against earned surplus and an equivalent credit to the reserve for depreciation of gas plant.

Depreciation

Having considered and disposed of Mr. Mylott's proposed revisions to the balance sheet as of June 30, 1945, there remains one further correction that should be made. This adjustment relates to the deficiencies existing in the company's depreciation reserves. The balances in these reserves as of June 30, 1945, before and after giving effect to the adjustments previously discussed (Items 9 and 10) are stated below. There are other adjustments to be considered subsequently.

Reserves for Depreciation of	Reported	Adjustments (Items 9 and 10)	Adjusted
Electric plant in service	$13,130.84	..	$13,130.84
Gas plant in service	1,521,476.24	$84,317.93	1,605,794.17
Plant held for future use	10,390.85	..	10,390.85
Other property	5,637.73	..	5,637.73
Total	$1,550,635.66	$84,317.93	$1,634,953.59

The balance in the electric depreciation reserve is equivalent to 18.37 per cent of the book cost of electric plant in service. The unadjusted balance in the gas plant reserve is 17.35 per cent of the book cost of the gas property in service and the adjusted balance is 18.31 per cent of such property. If compared with Mr. Mylott's original cost of the property, the book reserve would be 18.40 per cent before revision and 19.42 per cent after the accounting adjustment had been made. As indicated in Table 1 (*supra*) the balances in these two reserves have increased appreciably since January 1, 1938. At that date the electric reserve was $4,722.82 or 6.00 per cent of the original cost of the electric property and the gas reserve was only $253,944.79 or 2.85 per cent of the book cost of gas plant. The relationship of the book reserves to the original cost of plant held for future use and other

property are 20.15 per cent and 8.20 per cent respectively.

Prior to January 1, 1938, when the depreciation reserves were combined and reflected on the company's records in a so-called "retirement reserve" (January 1, 1924, to December 31, 1937) and in a so-called "accrued amortization of capital reserve," prior to January 1, 1924, the depreciation practices and policies of the Nassau and Suffolk Lighting Company were most unscientific and unrepresentative of the facts except in 1937. The annual accruals made by the company prior to January 1, 1937 had no direct relationship to the property involved or to its advancement toward ultimate retirement; but in 1937 and thereafter, the yearly charges to operating expenses approximated the depreciation currently accruing in the property.

The history of the depreciation reserve and its counterparts, from the inception of the company to January 1, 1938, is outlined in a tabulation prepared from the company's records and presented by Mr. Mylott. According to this tabulation, the company did not make any provisions for accruing depreciation until 1910 when it charged $8,064.32 to operating expenses and credited the reserve. During the next nine years, the total annual accruals to the reserve ranged from a minimum of $9.34 in 1918 to a maximum of $11,566.18 in 1916 and the balance in the reserve reached a maximum of $66,425.15 as of January 1, 1918. In 1920, the annual accruals were increased to about $39,000 and for the next two years the company set aside over $40,000 in each year. On January 1, 1923, the balance in the reserve was $155,400.92 but during the ensuing year the company did not include any allowance in operating expenses for accruing depreciation. After charging over $25,000 against the reserve for retirement losses in 1923, the remaining balance of $129,767.92 was used up by the improper charge for "expenses to be amortized" as previously discussed.

After the uniform system of accounts was revised on January 1, 1924, the annual charges to operating expenses for the next two years were practically equivalent to the retirement losses incurred by the company, with the result that balance in the reserve was only $352.37 as of January 1, 1926. During the three following years (1926–28), the company set aside $15,000 in each year for accruing depreciation, and increased the charge to $18,000 in 1929. In 1930, the charge to operating expenses and the credit to the reserve amounted to $21,000 but due to retirement losses of over $115,000 the company was required to transfer $53,851.21 from surplus in order to avoid a deficiency in the reserve. In 1931 and thereafter up to and including 1936, the annual accruals ranged from a minimum of $30,000 to a maximum of $117,525.84 and the balance in the reserve at January 1, 1937, was $118,415.71.

In 1937, the company completely reversed its previous practice of inadequately providing for proper accruals to the reserve and charged operating expenses with $182,000 for depreciation expense. Each year thereafter, the annual appropriation of $182,000 was continued although a small portion was charged against nonoperating income deductions for de-

preciation and amortization of other physical property. This appropriation of $182,000 was slightly in excess of the annual depreciation accruing in the property and permitted the company to make up a small part of the deficiency that existed in the reserves on January 1, 1938, as will be shown later.

Mr. Hine, consulting engineer to the Commission, prepared and submitted two estimates of the depreciation existing in the property of the Nassau and Suffolk Lighting Company, as well as the annual depreciation requirements for such property. The first estimate was as of January 1, 1938, but in this study he made no estimate of the depreciation existing in plant held for future use or in other physical property. The second estimate was as of June 30, 1945, and covered all of the property owned by the company.

Each of Mr. Hine's estimates was made after a personal examination of the company's property and an inspection of gas service and gas mains at street openings. He arrived at his estimate of depreciation as of January 1, 1938, by using average service lives for the various types of property based on the information thus obtained, on his judgment and experience, and by taking into consideration mortality studies he had made for gas services, gas mains, and gas meters in connection with depreciation studies of the Queens Borough Gas and Electric Company's property.

In his second study, Mr. Hine was unable to obtain additional data from the company's records for the electric property and he applied the annual depreciation rates of January 1, 1938, to the age of the electric property as shown by the company's records to obtain the accrued depreciation as of June 30, 1945. He stated, however, that pending a completion of similar studies for comparable property of the Long Island Lighting Company and the Queens Borough Gas and Electric Company, this total was merely an approximation of the depreciation existing as of June 30, 1945.

With respect to the depreciation existing in the gas property, Mr. Hine made a new determination as of June 30, 1945. He again examined the property and from a review of the retirements during the 7½-year period from January 1, 1938, he was able to obtain a mortality study for gas meters although similar data were not available for other types of property. With the aid of such data and based on his judgment and experience, he made new estimates of service lives and after giving due allowance in all plant accounts for mortality dispersion, which was based on mortality studies of similar property for other companies in the Long Island system, he estimated the depreciation existing in the gas property as of June 30, 1945. In his new studies he lengthened the service life of property in 18 plant accounts, reduced it in 3, and did not change 6.

In connection with gas mains held for future use, Mr. Hine used the lives for mains in service and estimated that the accrued depreciation would be approximately 25 per cent of the original cost of such property. With respect to gas services held for future use, he was unable to obtain satisfactory data for a detailed study and stated he did not believe any great portion of this

plant represented value from the standpoint of an entire gas property. He estimated that the accrued depreciation in these services was somewhere between 80 and 90 per cent as of June 30, 1945. For the structures not in the service of the public and classified by the company as other physical property, Mr. Hine estimated that the depreciation amounted to 45 per cent as of June 30, 1945, based upon a service life of fifty years and mortality characteristics used for other similar gas works structures.

For the purpose of comparing Mr. Hine's estimates of accrued depreciation with the book reserves as of June 30 1945, certain data for the various classes of property have been compiled from the record in this proceeding and are set forth in Table 2.

TABLE 2
Depreciation Data, June 30, 1945

	Electric Plant	Gas Plant	Plant Held for Future Use	Other Property
Original cost of property as adjusted herein	$71,488.04	$8,267,225.97	$51,576.94	$68,788.43
Depreciation reserve:				
Balance per books	$13,130.84	$1,521,476.24	$10,390.85	$5,637.73
Per cent of original cost	18.37	18.40	20.15	8.20
Balance adjusted for Items 9 and 10	$13,130.84	$1,605,794.17	$10,390.85	$5,637.73
Per cent of original cost	18.37	19.42	20.15	8.20
Accrued depreciation per Hine:				
Amount	$34,271.50	$2,526,235.27	$41,527.26	$22,216.52
Per cent of original cost	47.94	30.56	80.51	32.30
Deficiencies in book reserves	$21,140.66	$920,441.10	$31,136.41	$16,578.79

As shown in Table 2, Mr. Hine's accrued depreciation in the electric property as of June 30, 1945, was 47.94 per cent of the original cost of such property compared with the book reserve of 18.37 per cent. In his estimate as of January 1, 1938, the accrued depreciation for electric plant amounted to $24,546.61, or 35.67 per cent (Table 20) of the original cost of the property, and exceeded the book reserve by $19,823.79. As of June 30, 1945, his estimate of $34,271.50 was only $21,140.66 in excess of the book reserve (see Table 2, *supra*). From these figures, it will be noted that during the 7½-year period between the two estimates the company did not make up any of the deficiency in the electric reserve but actually lost ground.

A somewhat different condition exists in the gas department. Although the original cost of the gas property increased about $325,000 between January 1, 1938, and June 30, 1945, and a large portion of the plant was at least seven and one-half years older, Mr. Hine's new studies resulted in an estimate of accrued depreciation in the gas property of 30.56 per cent compared with his estimate of 22.58 per cent in his 1938 determination (Table 21). According to Table 2 (*supra*), the balance in the gas plant reserve of $1,521,476.24, before giving effect to the adjustments previously discussed (Items 9 and 10), was $1,004,759.03 less than Mr. Hine's estimate of $2,526,235.27. The difference would be reduced by the adjustments to $920,441.10. In his 1938 determination

Mr. Hine's accrued depreciation for gas property amounted to $1,793,-721.74 and exceeded the book reserve before adjustment by $1,539,776.95 and $1,455,459.02 after adjustment. In other words, during the 7½-year period the deficiency in the gas plant depreciation reserve was reduced by over $535,000 notwithstanding the increases in the amount and cost of property in service.

The reduction of the deficiency in the gas plant depreciation reserve during this period cannot be attributed to any one factor. In the first place, the company's accruals to this reserve were between $176,500 and $178,000 per year and this annual appropriation is about $12,000 to $14,000 higher than Mr. Hine's estimate of annual depreciation requirements as of June 30, 1945, but approximately the same as his estimate of the requirements as of January 1, 1938. Thus it may be said that during this 7½-year period the company has provided for some part of the deficiency in the annual charges to operating expenses.

In addition, the service lives of various types of property were lengthened due to the small charges to the depreciation reserve for losses on property retired during the period and the consequent extension of the total useful life. This was brought about largely by conditions caused by the World War.

As will be seen from Table 2, Mr. Hine's estimates of accrued depreciation for plant held for future use and for other property exceeded the balance in each of these reserves as of June 30, 1945. In the former account this excess amounted to $31,136.41 and in the latter $16,578.79. Adding these deficiencies to the deficiency in the electric plant reserve and in the gas plant reserve produces an understatement in the reserves of $1,073,-614.89 on June 30, 1945, before giving effect to the accounting adjustments (Items 9 and 10), and $989,296.96 after adjustment.

[12, 13] The company has not offered any evidence on the depreciation actually existing in its property. The cross-examination of Mr. Hine was very limited and strengthened rather than diminished the force of his testimony. Thus the only testimony as to the amount of depreciation actually existing is that given by Mr. Hine. It stands uncontradicted.

Apparently, the company relies upon its contention as to the power of the Commission in an accounting case to determine the amount of accrued depreciation actually existing in its property. So far as the power of the Commission to investigate and determine proper annual depreciation charges and the amount of accrued depreciation actually existing at any one date, there can be no question. The Public Service Law grants broad powers and they are ample to cover the work that has been done and the testimony received. It is argued that the Commission may not in an accounting case direct the company to increase its depreciation reserve to the amount of depreciation found actually to exist, although there can be no question as to the desirability of such increase and the duty of the company to provide a reserve equal to the amount of depreciation actually accrued. The law is clear that every utility must provide adequately for depreciation before it has any divisible profits and

before it may make any credits to surplus or to a profit and loss account out of which dividends are declared.

In a rate case, the Commission has not only the power but it has the duty of determining how much should be allowed for accruing depreciation and what should be deducted from the base cost for depreciation which has already accrued. This has been done repeatedly by the Commission and the decisions in this state and in the Federal courts have not questioned such power or the necessity of making such findings in a rate case where the complete cost of service is an issue.

The same is true as to cases involving the issuance of securities, the transfer of properties, and the consolidation or merger of corporations. This case and the investigations connected therewith have been conducted not so much for the purpose of indicating the adjustments which should be made in an accounting case as for use in the consolidation application involving not only the Nassau and Suffolk Company but three other companies in the Long Island system. The propriety of using the results testified to by Mr. Mylott and Mr. Hine in such cases cannot be successfully challenged; and if the motion made by counsel for the company to strike from the record all of the testimony given by Mr. Mylott and Mr. Hine had been granted, the companies' merger application would probably have to be dismissed because of inadequate information before the Commission upon which to make proper findings.

It may be that counsel had not considered when he made this motion on November 29, 1940, the results which would flow from the granting of the motion, for upon December 18, 1945, in the merger proceeding be requested that the Commission make available for use in that case the results of the work which has been and is to be done upon the accounts and property of the Queens Borough Gas and Electric Company and the Long Island Lighting Company (see Case 12215 Dec. 26, 1945).

Balance Sheet Adjustments

A balance sheet as of June 30, 1945 in condensed form, showing the figures on the books and the revisions that should be made in the accounts in order to conform them to the requirements of the uniform system, is set forth in Table 3. There were no questioned items in the amounts shown for electric plant in service, construction work in progress, and gas plant held for future use, and the book balances for these accounts represent the original cost of such property. After eliminating the miscellaneous intangible gas plant of $501,369.55, the book cost for gas plant in service is reduced to $8,267,255.97 and is in agreement with the original cost determinations made by the staff of the Commission and uncontested by the company. This correction, together with the write-off of the balances in the acquisition adjustments accounts, decreases the total utility plant of the company by $1,253,916.46.

The adjusted balance for total utility plant of $8,427,179.85 may be said to represent the original cost of all property owned and used in the service of the public, in process of construction and held for future use. It should be pointed out, however, that plant in service includes, under the ruling of

the Commission and the provisions of the system of accounts, the original cost of units of property which are partially used and useful in utility operations when the portion which is so used is not separable from that which is not used and useful. When a rate question is involved and it is necessary to determine as of a certain date the original cost of the use and useful property, there must then be determined what portion of such property is to be considered as used and useful. Until that question arises, all property which is partially used and useful and is not separable is included as plant in service.

The investment in associated companies has been decreased $322,499 to show the true asset value of the company's investment in the Long Beach Gas Company's preferred stock. The revised balance for this account includes a nominal $1 for this stock. The balance for other physical property consists of $19,418.38 for the original cost of land owned in fee and $49,370.05 for the original cost of certain structures not devoted by the company to the rendition of utility service.

The total adjustments reflected in Table 3 reduce the assets of the company from $11,208,261.34 to $9,631,845.88. As previously determined, all these revisions are chargeable against earned surplus with the exception of $45,449.99 which is charged against the reserve for depreciation of gas plant. After these adjustments are made, the balances will represent charges in accordance with the requirements of the uniform systems of accounts. The only "assets" which will then not represent property of real value are the amounts included for unamortized debt discount and expense and capital stock expense. The former is being amortized over the term of the long-term debt and will ultimately disappear, while the latter may be classified as a "debit" until the capital stocks to which it relates are retired or superseded.

The only revisions made to the liability accounts are in the depreciation reserves. In order to reflect the depreciation actually existing in the properties, it is necessary to increase the reported balances by an aggregate of $1,073,614.89. Of this amount, $84,317.93 represents the net accounting corrections (Items 9 and 10) that should be made in the depreciation reserve for gas plant, and the remainder, $989,296.96 represents the difference between the book reserves as modified and Mr. Hine's estimate of accrued depreciation.

In connection with the depreciation reserves, it should be pointed out that the company, after June 30, 1945, must make proper annual charges to operating expenses and income deductions for accruing depreciation if the reserves are to continue to reflect actualities. Since 1937, the directors of the company have appropriated $182,000 for annual depreciation expense on all property of the company. Apparently, this lump sum appropriation had no direct relationship to the depreciation accruing in the property and the basis of its determination was not

submitted in the present record. However, the company did apportion the total in 1944 to the various classes of property as follows:

Electric plant	$2,702.71
Gas plant	176,629.22
Plant held for future use	1,707.76
Other property	960.31
Total	$182,000.00

TABLE 3

Balance Sheet, June 30, 1945

Assets and Other Debits	Per Books	Adjustments	Adjusted
Electric plant in service	$71,488.04	..	$71,488.04
Gas plant in service	8,768,595.52	$501,369.55D	8,267,225.97
Construction work in progress	36,888.90	..	36,888.90
Gas plant held for future use	51,576.94	..	51,576.94
Electric plant acquisition adjustments	115,961.93	115,961.93D	..
Gas plant acquisition adjustments	636,584.98	636,584.98D	..
Total utility plant	$9,681,096.31	$1,253,916.46D	$8,427,179.85
Other physical property	$68,788.43	..	$68,788.43
Investments in associated companies	322,772.21	$322,499.00D	273.21
Total investment and fund accounts	$391,560.64	$322,499.00D	$69,061.64
Current and accrued assets	$784,807.69	..	$784,807.69
Deferred debits	$29,619.87	..	$29,619.87
Capital stock expense	$321,176.83	..	$321,176.83
Total	$11,208,261.34	$1,576,415.46D	$9,631,845.88
Liabilities and Other Credits			
Common capital stock	$1,000,000.00	..	$1,000,000.00
Preferred capital stock	2,726,200.00	..	2,726,200.00
Total capital stock	$3,726,200.00	..	$3,726,200.00
Long-term debt	$3,000,000.00	..	$3,000,000.00
Advances from associated companies	$2,086,225.52	..	$2,086,225.52
Current and accrued liabilities	$463,937.59	..	$463,937.59
Deferred credits	$12,380.48	..	$12,380.48
Reserve for depreciation of electric plant	$13,130.84	$21,140.66A	$34,271.50
Reserve for depreciation of gas plant	1,521,476.24	1,004,759.03A	2,526,235.27
Reserve for depreciation of gas plant held for future use	10,390.85	31,136.41A	41,527.26
Reserve for depreciation and amortization of other property	5,637.73	16,578.79A	22,216.52
Reserve for uncollectible accounts	25,330.77	..	25,330.77
Total reserves	$1,575,966.43	$1,073,614.89A	$2,649,581.32
Earned surplus	$343,551.32	$2,650,030.35D	$2,306,479.03Dr
Total	$11,208,261.34	$1,576,415.46D	$9,631,845.88
Note: Dividends accrued and unpaid on 7 per cent cumulative preferred stock			$1,867,447.00

A=Addition
D=Deduction
Dr=Deficit

Contrasted with the annual accruals made by the company are the estimates of annual depreciation requirements presented by Mr. Hine. His estimates were based on annual depreciation rates consistent with the average service life used in determining the accrued depreciation for the property in each plant account, for plant held for future use and for other physical property. His estimates of the requirements as of June 30, 1945, which were somewhat less than his determination as of January 1, 1938, were as follows:

Electric plant	$3,036.66
Gas plant	164,320.40
Plant held for future use	1,019.56
Other property	1,278.68
Total	$169,655.30

The company's total accruals in 1944 exceed Mr. Hine's estimates as as June 30, 1945, by nearly $12,500, and if the company continues to accrue annual depreciation expense on the basis that has been in effect since January 1, 1937, it will be accumulating a reserve at a more rapid rate than that required by studies made on a sound factual basis and consistent with the depreciation presently existing in the property. While there is no Commission prohibition against accumulating a depreciation reserve at a more rapid rate than depreciation is actually accruing, such a practice, which obviously produces incorrect operating costs, becomes an important matter in a proceeding involving the fixation of rates for service where customers should not be required to pay more than the reasonable and proper cost of the service rendered including an amount for property consumed. In other words, if the reserves were now corrected to the balances indicated in Table 3, the company could reduce its annual charges to operating expenses and income deductions by about $12,500 until such future time as studies scientifically made indicate that the reserve balances do not represent actualities in relation to the property then existing.

In order to write off amounts having no real value and eliminate deficiencies in the depreciation reserves require a charge of $2,650,030.35 against earned surplus. This wipes out the earned surplus of the company and creates a deficit of $2,306,479.03 as of June 30, 1945. In addition, dividends on the preferred stock are in arrears to the extent of $1,867,447 as of June 30, 1945. This is over 180 per cent of the stated value of the common stock (nearly twice) and over 65 per cent of the par value of the preferred stock. These facts show definitely that the common stock has no value and that the stated value of the preferred stock, which is held by the general public, is impaired nearly 50 per cent without reference to the huge arrearage in dividends. As the common stock of this company is owned by the Queens Borough Gas and Electric Company and is carried as an asset on its books, it will be necessary for that company to adjust its accounts.

Conclusion

The determinations here made affect two cases; the instant case, the primary purpose of which is to determine what adjustments should be required in the accounts and records of the Nassau and Suffolk Lighting Company; and Case 12215 in which approval is asked of a proposal to consolidate the Nassau and Suffolk Light-

ing Company with two other companies into the Long Island Lighting Company, with a reorganization of the financial structure of the consolidated company. Thus, the determinations in this case will be very important factors in the consolidation case and if any consolidation ultimately results, whether it is according to the proposed plan or according to some other plan which may be evolved, there will be no necessity of issuing an order regarding the accounts and records of the Nassau and Suffolk Company except as a part of the consolidation. Hence, I suggest that no order be adopted in this case at present but that this memorandum be approved by the Commission and that formal action be deferred until it is determined whether there is to be a consolidation on some plan. This suggestion is in line with that made by counsel in Case 12215, reported upon by me under date of December 26, 1945. If no consolidation results within a reasonable time, the Commission should consider an order in this proceeding carrying the determinations into effect.

SECURITIES AND EXCHANGE COMMISSION

Re Electric Bond & Share Company et al.

File Nos. 54-127, 59-3, 59-12, Release No. 6121
October 10, 1945

APPLICATION *for approval of plan under § 11(e) of the Holding Company Act providing initial step in retirement of holding company's outstanding preferred stock; plan approved.*

Security issues, § 96 — Common stock basis — Recapitalization of holding company.

1. The existence of preferred stock in the corporate structure of a holding company should be eliminated as repugnant to the standards of § 11 (b)(2) of the Holding Company Act, 15 USCA § 79k(b)(2), where the requirements of said stock would necessarily have to be met almost entirely out of common stock dividends, p. 297.

Intercorporate relations, § 19.7 — Simplification of holding company system — Complexity of system.

2. The corporate structure of a holding company unduly and unnecessarily complicates the structure of the holding company system of which it is a part where, by means of relatively thin equity holdings in its five large subholding companies, the holding company controls public utility companies operating in thirty-one states and thirteen foreign countries; where the subholding companies, with one exception, and all of their subsidiaries have capitalizations consisting of debt, preferred, and common

stock; where the claims of the holding company's preferred stock to income generated by the operations of the subsidiaries are subordinate to the claims of four or five other classes of securities on which there are arrearages; and where some of the subsidiaries have unsatisfactory capital structures requiring dividend restrictions, p. 297.

Corporations, § 18 — Voting power distribution — Holding company regulation.

3. Voting power is inequitably distributed among security holders of a holding company system, within the meaning of the Holding Company Act, where voting control is concentrated in the hands of the holding company's common stock representing 83.4 per cent of the total voting power, which stock, because of inadequate earnings, has not received a dividend for many years, p. 297.

Intercorporate relations, § 19.3 — Holding company simplification — Necessity of plan.

4. A plan providing for the pro rata distribution to a holding company's preferred stockholders of $30 in cash, as a first step in the retirement of such preferred stock, was held necessary to effectuate the provisions of § 11(b) of the Holding Company Act, 15 USCA § 79k(b), where elimination of the preferred stock was necessary to comply with the standards of § 11(b) of the act, p. 297.

Corporations, § 22 — Holding company reorganization — Fairness of plan.

5. A plan filed under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), by a registered holding company, whose capitalization consists of preferred and common stock, providing, as an initial step in the retirement of the company's preferred stock, for the payment of cash of $30 per share to the preferred stockholders accompanied by a reduction of $30 per share in the liquidation, redemption, or other rights in distribution, and by a reduction of 30 per cent in the annual dividend rights of the preferred stock, was held to be fair and equitable on the ground that the $30 pro-rata distribution was an appropriate first step in awarding the preferred stockholders the equitable equivalent of their present rights, p. 301.

APPEARANCES: John F. MacLane, Richard Jones, and Benjamin C. Milner, of Simpson, Thacher and Bartlett, for Electric Bond and Share Company; Melvin G. Dakin and Maurice C. Kaplan, of the Public Utilities Division of the Commission.

By the COMMISSION: We have before us for approval Plan I of a series of three plans filed under § 11(e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(e), by Electric Bond and Share Company ("Bond and Share"), a registered holding company. These plans are described by Bond and Share as being for the purpose of enabling it to comply with the provisions of § 11(b) of the act. Among other things which are detailed in our subsequent discussion, the plans propose the retirement of all of the outstanding $5 and $6 preferred stocks of Bond and Share. Plan I provides, as an initial step in such retirement, for a pro rata payment of $30 per share, as a capital distribution, and a 30 per cent reduction in the respective dividend rates. Plan II proposes the satisfaction of the balance of the claims of said preferred stocks through the distribution of certain securities and/or cash. Plan III

contemplates the disposition by Bond and Share of all securities of domestic public utility operating companies and of public utility holding companies whose subsidiaries operate in the United States, and proposes the retention by Bond and Share as its remaining investments the securities of American & Foreign Power Company ("Foreign Power"), whose subsidiaries operate outside the United States, and the securities of Ebasco Services Incorporated ("Ebasco"), a subsidiary service company.

Plans II and III also have for their purpose the settlement of all claims against Bond and Share and its wholly owned subsidiaries by and on behalf of National Power & Light Company ("National"), American Power & Light Company ("American"), and Electric Power & Light Corporation ("Electric"), their subsidiaries, certain former subsidiaries, and their respective security holders.

Since essential details of Plans II and III are lacking and are to be supplied by amendment our Notice of Filing and Order for Hearing, which described all of the three plans, specifically limited the initial hearings to consideration of Plan I. Numerous security holders and their representatives filed requests for participation in the proceedings generally. However, only one stockholder, Samuel Okin, appeared at the hearing on Plan I, and requested personal participation in the proceedings. Such personal participation was denied by the Trial Examiner pursuant to our Memorandum to Trial Examiners dated September 27, 1944, but Okin was extended the privilege of participation through counsel of which he did not avail himself. Briefs and oral argument have been waived by the applicants. On the basis of the record, we make the findings set out below:

The Holding Company System

Bond and Share is the top holding company in a system comprised of four subholding companies for domestic operations, which subholding companies have forty-one utility subsidiaries and forty-four nonutility subsidiaries, and one subholding company for foreign operations which has 97 utility and nonutility subsidiaries.

The five subholding company subsidiaries, which are all registered holding companies, are: American Gas and Electric Company ("American Gas"); American; National; Foreign Power; and Electric. Bond and Share also owns all of the capital stock and debt of Ebasco which, in turn, owns all of the capital stock of Two Rector Street Corporation, a corporation which owns and operates the Bond and Share office building in New York.

Appendix A, annexed hereto, shows the five subholding company subsidiaries of Bond and Share and their consolidated capitalizations adjusted for preferred stock arrears together with the amounts of such securities owned by Bond and Share as of December 31, 1944.[1]

The corporate assets of Bond and Share as of June 30, 1945, consisted

[1] These amounts, except for the adjustments to reflect preferred arrears are as reported by the subholding companies. It should be noted, however, that substantial amounts of inflationary items are included in these figures. For purposes of these Findings, we do not deem it necessary to adjust the reported figures to reflect the exclusion of such inflationary amounts.

principally of $20,900,000 in cash, $30,068,000 in U. S. Government Bonds, and the following securities: [See Table I, page 291.]

The company states that the investments in the preferred stocks, common stocks, and option warrants of the system subholding companies and the investment in Commonwealth & Southern Corporation, in the aggregate book amount of $390,916,073, had a value on the basis of market quotations as of June 30, 1945, of $165,029,600. As indicated in Table I [Page 291], the carrying value as per the books of Bonds and Share of the investments in the notes of Foreign Power, the bonds of Cuban Electric Company, and in the capital stock and indebtedness of Ebasco Services, Incorporated, aggregate $51,290,000.

The balance sheet of the company, per books and pro forma as of June 30, 1945, is attached hereto as Appendix B. There is also attached as Appendix C an income statement for the twelve months ended June 30, 1945 together with adjusted statements reflecting the proposed payment and the elimination of income on investments no longer owned as of June 30, 1945. The capitalization and surplus of the company, per books as of June 30, 1945, and pro forma, after giving effect to the proposed pro-rata distribution of $30 per share, is as follows: [See Table II, page 292.]

The $5 and $6 preferred stocks rank pari passu with each other and are entitled to $100 per share upon liquidation or other distribution of capital and are callable at the option of the company at any time at the redemption price of $110 per share, plus accrued dividends. There are no dividend arrears on either the $5 or $6 preferred stocks.

The preferred stock and the common stock have one vote per share with no provision for additional voting rights to be vested in the preferred stock in the event of a default in the payment of preferred dividends. The voting stock of Bond and Share totals 6,293,638 shares, of which the common stock represents 83.4 per cent and the preferred stock 16.6 per cent.

Since 1941, the net income of the company available for the payment of dividends on the preferred stocks has declined sharply as a result of decreased total income combined with increased taxes. This is shown in the tabulation below: [See Table III, page 292.]

As this table shows, in 1940, when net income of the company was $9,979,293, the highest of the entire period, it was $1,545,363 in excess of the company's annual $5 and $6 preferred stock dividend requirements of $8,433,930. However, since 1941 the net income of the company has been substantially less than the preferred stock dividend requirements in spite of the preferred stock retirement program discussed subsequently. Furthermore, as may be noted from Table III total income of Bond and Share before corporate taxes and expenses for the twelve months ended June 30, 1945, was less than the preferred stock dividend requirements.

As shown in Appendix C hereto attached, the total income of the company for the twelve months ended June 30, 1945, adjusted to reflect only income on investments as at June 30, 1945, was $4,104,277 and the net income of the company on the same basis is estimated by the company at $2,

TABLE I

System Companies	Class of Security	Principal Amount or Number of Shares		Carrying Value on Books of Bond and Share	Per Cent of Total Outstanding
American & Foreign Power Company Inc.	Notes	$30,000,000.00		$30,000,000.00	100.00
	Preferred $7	13,800	shs)		2.88
	$6 Preferred	65,809.1	shs)		17.00
	Second Preferred $7	2,158,236	shs)	229,952,488.67	83.98
	Common	881,500	shs)		40.20
	Option Warrants	5,812,884			88.98
Cuban Electric Company	Debentures	$19,500,000.00		19,500,000.00	25.87
American Gas and Electric Company	Common	846,985	shs)	37,690,975.25	18.89
American Power & Light Company	$5 Preferred	51,840	shs)	1,556,236.80	5.30
	Common	937,221	shs)	22,183,196.01	31.17
Electric Power & Light Corporation	$7 Preferred	485	shs)		.09
	Second Preferred $7	13,905	shs)	36,606,915.55	18.59
	Common	1,976,638	shs)		57.23
	Option Warrants	393,408			73.57
National Power & Light Company	Common	2,540,450	shs)	59,612,107.52	46.56
Ebasco Services Incorporated	Advances	$100,000.00		100,000.00	100.00
	Capital	16,900	shs)	1,690,000.00	100.00
Total System Companies				$438,891,919.80	
Other Companies					
Commonwealth & Southern Corporation	Common	793,362	shs)	$2,875,937.25	2.36
	Option Warrants	779,051		438,216.19	4.43
Total Investment Securities and Advances				$442,206,073.24	

TABLE II

	Per Books Amount	%	Pro Forma Amount	%
$6 Preferred Stock, no par value, outstanding 840,268 shares	$84,026,800	17.2	$58,818,760	12.9
$5 Preferred Stock, no par value, outstanding 203,012 shares	20,301,200	4.2	14,210,840	3.1
Total Preferred Stock	$104,328,000	21.4	$73,029,600	16.0
Common Stock, $5 par value, outstanding 5,250,357.66 shares	$26,251,788	5.4	$26,251,788	5.8
Capital Surplus	323,201,426	66.3	323,201,426	70.9
Earned Surplus	33,385,851	6.9	33,385,851	7.3
Total Common Stock and Surplus	$382,839,065	78.6	$382,839,065	84.0
Total Capitalization and Surplus	$487,167,065	100.0	$455,868,665	100.0

TABLE III

	Total Income*	Net Income	Total Dividend Requirements of Preferred Stocks ($5 and $6)	Balance
1938	$11,299,315	$9,401,251	$8,433,930	$967,321
1939	11,536,462	9,709,074	8,433,930	1,275,144
1940	11,247,241	9,979,293	8,433,930	1,545,363
1941	11,269,626	9,571,423	8,321,330	1,250,093
1942	9,108,747	5,659,041	7,744,048	(2,085,007)
1943	8,904,225	5,441,107	7,396,917	(1,955,810)
1944	7,445,370	4,622,479	6,435,125	(1,812,646)
12 months ended June 30, 1945	5,673,186	3,570,154	6,204,521	(2,634,367)

* Includes income through November 28, 1944 from United Gas Corporation securities which are no longer held by the company.

( ) Denote excess of preferred stock dividend requirements over net income.

591, 998, both of which amounts are to be compared with dividend requirements of $6,056,668 on the preferred stocks outstanding at that date.

Prior Proceedings under § 11

The Commission instituted proceedings with respect to the Bond and Share holding company system, pursuant to § 11(b)(1) of the act, on February 28, 1940, and, pursuant to § 11(b)(2) of the act, on May 9, 1940. The proceedings pursuant to § 11(b)(1) were directed, inter alia, to a determination of what action, if any, was necessary and should be required to be taken by Bond and Share and certain of its subsidiaries, or any of them, to limit the operations of Bond and Share and any of its subsidiaries which were registered holding companies to single integrated public utility systems, and to such other businesses as were reasonably incidental, or economically necessary or appropriate, to the operations of such integrated public utility systems, and the extent to which Bond and Share or any of its subsidiaries which were registered holding companies should be permitted to retain any interest in any business other than that of a public utility. No bearings devoted specifically to consideration of these issues have been held.

The proceedings pursuant to § 11(b)(2) were directed, inter alia, to a determination of whether it was necessary to discontinue the existence of, or to modify the corporate structure of, or to redistribute the voting power

among security holders of, Bond and Share and certain of its subsidiaries.

By order dated June 7, 1940, we limited hearings initially with respect to the § 11(b)(2) proceedings to the sole issue of whether it was necessary to discontinue the existence of National, American, Electric, and Foreign Power, or any of them, in order to ensure that the structure of the holding company system of Bond and Share should not be unduly or unnecessarily complicated and that voting power should not be unfairly or inequitably distributed among the security holders in that system. Hearings were held with respect to these issues from time to time during the period from June 18, 1940, to August 22, 1942. The record with respect to National was completed first and on August 23, 1941, we issued our order requiring that the existence of that company be terminated, that said company be dissolved, and that Bond and Share and National proceed with due diligence to submit to the Commission plans for National's prompt dissolution.[2] A year later the record was completed with respect to American and Electric, and on August 22, 1942, we issued an order directed to American and Electric identical with that issued with respect to National.[3]

By order dated May 18, 1943, American Gas was made a party to the § 11(b)(2) proceedings, its application for an order declaring it not to be a subsidiary of Bond and Share having been denied by the Commission by order dated May 12, 1941, 9 SEC 247, 40 PUR(NS) 453, and such order having subsequently been affirmed in court proceedings. Hearings were held for the purpose of determining whether Bond and Share should cease to be a holding company with respect to American Gas during the course of which Bond and Share stated that it would take the necessary steps to insure the termination of its holding company status with respect to that company. A plan looking to this result was filed by the company (File No. 54–58) but not in such detail that it could be approved. In connection with the filing of Plan II (which also provides for achieving this result), an application has been made to withdraw the plan originally filed.

Foreign Power was dismissed as a party to the proceedings pursuant to § 11(b)(2) by order dated June 17, 1940, but was reinstated by order dated October 2, 1942. Bond and Share joined Foreign Power in a plan for the recapitalization of the latter company filed under § 11(e) of the act on October 26, 1944. It is proposed therein that Bond and Share receive for its holdings of Foreign Power securities and Cuban Electric debentures $6,368,700 of new Foreign Power debentures, $1,592,210 of cash and 1,897,693 shares of new common stock. It is proposed that public security holders will receive $112,912,500 of new Foreign Power debentures, $16,728,355 of cash, and 602,307 shares of new common stock in satisfaction of their claims. Proceedings on this plan have not as yet been completed. Bond and Share has also joined in applications approved by the

[2] Re National Power & Light Co. (1941) 9 SEC 978.

[3] Re Electric Bond & Share Co. (1942) 11 SEC 1146, 46 PUR(NS) 321, aff'd *sub nom.* American Power & Light Co. v. Securities and Exchange Commission (1944) 53 PUR (NS) 16, 141 F2d 606; cert. granted (1945) — US —, 89 L ed —, 65 S Ct 1400.

Commission and providing for the reduction of the interest rate on Foreign Power notes held by Bond and Share from 6 per cent to 3 per cent and for reduction of the principal amount thereof from $35,000,000 to $30,000,000 by the payment of $5,000,000 in cash.

Bond and Share also joined in a plan of reorganization filed under § 11(e) by United Gas Corporation (a subsidiary of Electric). The plan was consummated on November 28, 1944, and pursuant thereto Bond and Share received $44,000,000 in cash in satisfaction of all of the interests of Bond and Share in such corporation.[4]

Preferred Stock Retirement Program

Since September 2, 1941, the Commission has from time to time authorized the company to use treasury funds to acquire its preferred stock through open market purchases and, under certain circumstances, through direct purchases from security holders. To June 30, 1945, the company has expended $32,323,882 in the acquisition of shares of $5 and $6 preferred stock having an aggregate liquidating value of $41,237,500, thus reducing the stated value of its outstanding preferred stock from $145,565,500 to $104,328,000. Preferred stock annual dividend requirements were thereby reduced from $8,433,930 to $6,056,668, a decrease of $2,377,262.

The last authorization of the Commission provided for the use by the company of the $44,000,000 received from United Gas Corporation in the acquisition of its preferred stock. At the time the present plans were filed, however, only approximately $1,000,000 of such amount had been expended. At the time the authorization was granted, we said:

"We also are of the opinion that under the circumstances the open-market purchase program contemplated by the filing will prove to be only a stop-gap and that a more comprehensive program will be necessary from the point of view of Bond and Share. Moreover, in our administration of the act we could not allow a long drawn-out program to interfere with the resolution of the problems of Bond and Share under the act. However, we concur in the view that it will be more feasible to formulate and pass upon such a comprehensive program at the time of the actual consummation of the [United Gas Corporation] § 11(e) plan or thereafter. We therefore have determined to approve the application herein subject to the right of Bond and Share to file substitute or additional programs in the future and subject to reservation of our jurisdiction to require such filings or to take such other action as may be necessary or appropriate under the provisions of the act."

In accordance with a reservation of jurisdiction made at the time of the approval, the Commission suspended its approval upon the filing of the present plans and issued a show cause order why the authorization should not be modified or rescinded in light of the alternative use proposed for a substantial portion of the funds in the plans as filed. A hearing has been held with respect to this matter and for reasons which are set forth in an

[4] Re United Gas Corp. Holding Company Act Release No. 5271, Sept. 7, 1944; plan approved, in Re United Gas Corp. (1944) 59 PUR(NS) 372, 58 F Supp 501.

opinion and order to be issued separately from this findings, opinion, and order, we have determined to rescind our previous authorization of the use of these funds in preferred stock acquisitions.

We turn now to a description of the plans filed by Bond and Share, pursuant to § 11(e) of the act, and, thereafter, to a consideration of Plan I which is the only plan before us at this time.

Plan I

As the initial step in the retirement of all of the outstanding shares of $5 and $6 preferred stocks of Bond and Share, it is proposed that an immediate cash payment (through a designated agent) of $30 per share be made on such preferred stocks, as a capital distribution, accompanied by a modification of the rights of the preferred stockholders. The more important rights of the holders of the preferred stock which are proposed to be modified are: (1) a reduction of $30 per share in the amounts which such holders shall be entitled to receive, either in the event of liquidation or redemption of all or any portion of such preferred stocks, or in the event of a capital distribution thereon; and (2) a reduction of 30 per cent in the annual dividend rates of $5 and $6, respectively, subject to any adjustment which, subsequent to orders of the Commission and any court approving Plan I, may be found by the Commission to be fair and equitable and approved by such court. The voting rights of the preferred stock will not be altered by the said $30 payment.

Bond and Share requests that the Commission, in the event Plan I is approved, apply to an appropriate Federal court for approval and enforcement of such plan. It is proposed that the effective date of Plan I shall be determined by the said court and that such effective date shall be not less than fifteen days after the mailing of notice to the holders of record of the preferred stocks. The period of time during which unclaimed cash for pro rata payments will be left in the hands of the designated paying agent will be fixed in Plan II.

Plan II

It is proposed to complete the retirement of the $5 and $6 preferred stocks through the distribution of certain securities and/or cash. Such securities will consist of the major portion of Bond and Share's holdings of the common stock of American Gas, and the major portion of the common stocks of the three principal subsidiaries of National which Bond and Share expects to receive in connection with the dissolution of National. In such dissolution, it is proposed that Bond and Share, which owns 46.56 per cent of National's common stock, will receive, among other things, approximately 254,036 shares of the common stock of Birmingham Electric Company, 423,393 shares of the common stock of Carolina Power & Light Company and an undetermined number of shares of the common stock of Pennsylvania Power & Light Company ("Pennsylvania"). In addition, it is proposed that Bond and Share will acquire by subscription in connection with a plan of recapitalization for Pennsylvania, an as yet unspecified number of shares of the common stock of Pennsylvania, the number of shares of Pennsylvania common stock

to be distributed pursuant to this Plan II to be definitely specified by amendment.[5]

The distribution of assets proposed in Plan II is as follows:

For each share of $6 preferred stock:

4/5 of a share of American Gas and Electric Company common stock;
1/4 of a share of Birmingham Electric Company common stock;
2/5 of a share of Carolina Power & Light Company common stock;
A number of shares of Pennsylvania Power & Light Company common stock and/or other securities and/or cash which will be specified by amendment.

For each share of $5 preferred stock:

4/5 of a share of American Gas and Electric Company common stock;
1/5 of a share of Birmingham Electric Company common stock;
1/3 of a share of Carolina Power & Light Company common stock;
A number of shares of Pennsylvania Power & Light Company common stock and/or other securities and/or cash which will be specified by amendment.

It is likewise requested with respect to Plan II that the Commission, in the event it approves the plan, apply to an appropriate Federal court for approval and enforcement and that such court fix the effectuation date of the plan. It is proposed to cut off rights of preferred stockholders not claiming the pro rata payment of $30 under Plan I and the distribution of securities and/or cash under Plan II at the end of six years from the effective date of Plan II.

Plan III

Bond and Share proposes to settle all claims against Bond and Share and its wholly owned subsidiaries by and on behalf of the subholding company subsidiaries, American and Electric, their subsidiaries, and certain of their former subsidiaries, such settlements to be actually effectuated as part of this Plan III, however, only to the extent that such settlements are not effectuated in Plans filed or to be filed with the Commission by American and Electric and joined in by Bond and Share. Plan III, as filed, specifies neither the amounts involved nor the methods to be used in effectuating such settlements. Subsequent to such settlements, it is then proposed to sell or otherwise dispose of all securities which Bond and Share may then own of public utility holding companies whose subsidiaries operate in the United States, including any securities it may have or hereafter acquire of American and Electric, and of all securities which it may then own of public utility companies operating in the United States. The plan, as filed, contains no description of the specific methods to be used in effectuating the disposition of such securities. The applicants request that the Commission, in the event Plan III is approved, apply to an appropriate Federal court for approval and enforcement of such plan.

Upon consummation of the three plans, Bond and Share proposes to retain as its remaining assets: (1) the securities which it may then own of Foreign Power; (2) the stock and debt of Ebasco; and (3) cash and miscellaneous current assets. Also upon consummation of the three plans, Bond and Share proposes to

[5] Bond and Share has joined National in a plan to be consummated prior to National's dissolution, proposing the settlement of all claims against Bond and Share and its wholly owned subsidiary by or on behalf of National, its subsidiaries, certain of its former subsidiaries, and their respective security holders.

apply to the Commission, pursuant to the appropriate sections of the act, to exempt it and its subsidiary companies from the act and each and every provision thereof.

It will be noted that essential details of Plans II and III are lacking and that such details are to be supplied subsequently by amendment. Nothing herein stated with respect to Plans II and III should be construed as an approval on our part of any of the provisions of said plans. As we have previously noted, only Plan I can be passed upon by us at this time.

Applicable Statutory Requirements

In order to approve Plan I under § 11(e), we must find that it conforms to the applicable standards of the act. These standards include the requirement that the plan be necessary to effectuate the provisions of § 11(b) and fair and equitable to the persons affected by such plan. To make the plan's provisions binding upon all security holders, Bond and Share has requested us, in the event of our approval, to apply to an appropriate court under §§ 11(e) and 18(f) for enforcement of Plan I.

Necessity for Plan I

[1–4] Bond and Share is the apex company of a highly pyramided holding company system. By means of relatively thin equity holdings in its five large subholding companies, it controls public utility companies operating in 31 states and 13 foreign countries with aggregate combined assets per books of $3,376,555,170. The subholding companies, with the exception of National, and substantially all of their subsidiaries have capitalizations consisting of debt, preferred, and common stocks.[6]

As Appendix A shows, Bond and Share owns only a relatively small portion of the total capitalization of the system and its preferred and common stocks represent, therefore, a further stratification of the already attenuated equity of Bond and Share in the assets of the system.

The claims of Bond and Share's preferred stock to the income generated by the operations of the utility subsidiaries are subordinate to the claims of as many as four or five other classes of securities, i. e., the bonds and preferred stocks of the operating companies and the debentures and preferred stocks of the subholding companies. As a result of arrearages on the preferred stocks of American, Foreign Power and Electric, there are additional barriers to the flow of income to Bond and Share.[7] The arrearages on the first preferred stocks of these companies, as at December 31, 1944, and the percentage of such stocks held by Bond and Share, are shown in Table IV. [See page 298.]

Various of the operating subsidiaries also have presently unsatisfactory capital structures which have required the imposition of dividend restrictions as corrective devices. These restrictions also have the effect of im-

[6] National also had a stratified corporate structure similar to the other subholding companies in the Bond and Share system but, pursuant to our order of dissolution, it has retired its own corporate debt and preferred stock and has disposed of numerous subsidiaries.

[7] In the case of Foreign Power, Bond and Share presently owns $30,000,000 of Foreign Power 3 per cent notes and approximately 9 per cent of Foreign Power's first preferred stock, from which securities it currently receives income.

TABLE IV

	No. of Shares Outstanding*	Held by B & S No. of Shares	%	Arrearages as to Dec. 31, 1944*
American:				
$6 Preferred Stock	793,581.2	.....	....	$29,817,979
$5 Preferred Stock	978,444	51,840	5.30	30,637,528
Total	1,772,025.2	51,840	2.93	$60,455,507
Electric:				
$7 Preferred Stock	515,135	485	.09	$42,529,767
$6 Preferred Stock	255,430.67	.....	....	18,109,845
Total	770,565.67	485	.06	$60,639,612
Foreign Power:				
$7 Preferred Stock	478,995	13,800	2.88	$35,289,957
$6 Preferred Stock	387,025.65	65,809.1	17.00	24,440,566
Total	866,020.65	79,609.1	9.2	$59,730,523

* Although nondividend bearing scrip is shown as shares outstanding, accumulated arrearages on such certificates have not been included in the table.

peding the flow of income to Bond and Share.

As may be noted from Table III, *supra*, the net income of Bond and Share from December 31, 1941, to December 31, 1944, has been $5,853,463 less than the total preferred dividend requirements for the period. Bond and Share has, however, been paying its preferred dividends with the result that its assets and its earned surplus are continually being depleted. No dividends of any kind have been declared or paid on Bond and Share's common stock since 1933 and no dividends in cash have been declared or paid on such common stock since the organization of the present company in 1929.

Table III thus demonstrates that under present circumstances the underlying structure of the system is not supporting Bond and Share's corporate structure and, on the basis of pro forma estimates made by the company, will not support it. There is, of course, to be considered in this connection the presence of $51,000,000 of cash or cash equivalent in the company's treasury. C. E. Calder, chairman of the company's board of directors, has, however, testified that the company could not, within the framework of the act, use these funds in such a manner as to enable the company to meet its preferred stock capital costs. Even assuming, however, that the funds could be so invested, and that Bond and Share will receive, as the result of the consummation of pending plans involving the reorganization of Foreign Power and the dissolution of National and the consummation of other steps which would result in the dissolution of American and Electric, securities yielding substantial income, the corporate structure of Bond and Share would necessarily rest on assets consisting almost entirely of common stocks which would be junior to large amounts of debt and preferred stocks. The requirements of the preferred stock in that structure would thus necessarily have to be met almost entirely out of common stock dividends. We have previously held under similar circumstances that a preferred stock is re-

pugnant to the standards of § 11(b)(2). See Re Commonwealth & Southern Corp. (1942) 11 SEC 138, 44 PUR(NS) 217, affirmed in Re Commonwealth & Southern Corp. v. Securities and Exchange Commission (1943) 48 PUR(NS) 72, 134 F2d 747.

It will also be noted from Appendix A that Bond and Share owns voting securities of its domestic subholding company securities having an aggregate adjusted underlying value of $125,546,864. This amount represents 14.9 per cent of the aggregate adjusted capitalization of such subholding companies and 6.2 per cent of the aggregate adjusted capitalization of such systems. If the consolidated capitalization of the domestic subholding company systems were further adjusted to reflect the elimination of inflationary items in the property accounts of the underlying operating companies, and the excess of subholding company costs over underlying book values, the disproportion between Bond and Share's investments and its voting control would be substantially greater.

With respect to its foreign utility holdings it is to be noted that, although Bond and Share owns a substantial portion of the adjusted consolidated capitalization of the Foreign Power system, voting control of the system is entirely vested in the common stock of Foreign Power and that such stock, after adjustment for arrearages on preferred stock, is $211,125,949 below water. Further adjustment to reflect elimination of inflationary items of the types mentioned above would increase the common stock deficit.

The relatively marginal holdings noted above are sufficient to vest in Bond and Share undisputed control over the actions and destinies of its vast utility holding company empire. Voting control of Bond and Share is concentrated in the hands of its common stock which, as noted, represents 83.4 per cent of the total voting power. This stock which, because of inadequate earnings, has not received a dividend since 1933, controls the entire Bond and Share system.

We believe that the foregoing facts compel the conclusion and we find that the corporate structure of Bond and Share unduly and unnecessarily complicates the holding company structure of which it is a part and unfairly and inequitably distributes voting power among security holders of such holding company system, that a preferred stock is inappropriate in Bond and Share's structure, and the retirement of such preferred stock is necessary to effectuate § 11(b)(2).[8] This is true whether or not the ultimate consum-

[8] Section 11(b)(2), in pertinent part, provides: "It shall be the duty of the Commission, as soon as practicable after January 1, 1938: . . . to require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company . . ."

mation of Plans I, II, and III would resolve all of Bond and Share's problems under § 11(b).

The retirement of Bond and Share's preferred stock is also necessary to effectuate § 11(b)(1).[9] Appendix D contains a map of the United States which indicates the areas in which Bond and Share's domestic public utility subsidiaries operate. In addition, as noted, Bond and Share's subsidiary, Foreign Power, operates in 13 foreign countries. Obviously, the effect of Clause B of § 11(b)(1), to say nothing of Clauses (A) and (C), is to require a very substantial diminution of the scope of Bond and Share's operations. Thus, apart from any further steps which may be required of Bond and Share under § 11(b)(2), it would be faced, under the standards of § 11(b)(1), with the necessity of drastically contracting the number of domestic public utility companies it could continue to control and in addition it would have to dispose of its interests in the foreign utility field. On the other hand, if it proposed to maintain its foreign holdings, paragraph (B) of § 11(b)(1) would require it to dispose of all of its interests in domestic utilities. As previously noted, the plans filed by Bond and Share propose the divestment of all its holdings in domestic public utilities.

The record indicates, and we so find, that the necessary contraction of Bond and Share under the standards of paragraph (B) of § 11(b)(1) would result in the disposition of assets of so substantial a nature as to inevitably require the retirement of Bond and Share's preferred stock.

On the basis of the above, we conclude that the elimination of Bond and Share's preferred stock is a necessary step required to be taken by Bond and Share to effectuate §§ 11(b)(1) and 11(b)(2).

As has been noted, Plan I provides for an immediate payment of $30 per share on such preferred stocks as a capital distribution and for modifications in the rights of the preferred stockholders. It is thus plain that Plan I is a major step in the elimination of the preferred stock. It is also plain that it is a step which Bond and Share's present financial circumstances dictate even though Plan II were not to be consummated and compliance with § 11(b) were to be achieved through some alternative plan or plans. It is true that Plan I does not

[9] Section 11(b)(1), in pertinent part, provides: "It shall be the duty of the Commission, as soon as practicable after January 1, 1938: To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding company system of which such company is a part to a single integrated public utility system, and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

"(B) All of such additional systems are located in one state, or in adjoining states, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation. . . ."

of itself provide for complete compliance with § 11 but, as discussed in the succeeding section of this opinion, there appear to be compelling reasons why the proposed partial retirement is appropriate from the viewpoint of Bond and Share investors. We have held that a plan to meet the standards of "necessity" need not effect complete compliance in one step. Provided we find Plan I to be fair and equitable and that it meets other applicable standards of the act, we find it is necessary to effectuate § 11(b).

Fairness of Plan I

[5] The fairness of the plan must of course be considered in the light of its effect on the two classes of preferred stock and on the common stock of the company. On the question of the treatment to be accorded preferred and common stockholders in effectuating the provisions of § 11(b) we have repeatedly held that such stockholders must receive the equitable equivalent of their existing rights. In this connection we have held that the retirement of senior securities pursuant to the requirements of § 11 (b) is not an exercise by the company of a right of redemption which would entitle the holders to receive the call price as such. We have also held that retirement of a preferred stock pursuant to § 11(b) is not to be regarded as a liquidation such as would entitle the holders of the stock to enforce claims to a liquidation preference as though such claims had matured.[10] We have said that the rights comprised in a preferred stock to be retired pursuant to § 11(b) must be viewed apart from the impact of that section and must be appraised with emphasis upon currently operative rights such as preferences as to dividends as against inchoate rights such as liquidating preferences.

As we have noted, Plan I proposes only an initial payment to the preferred stock of $30 per share in cash coupled with a 30 per cent reduction in the $5 and $6 dividend rates, subject to such adjustment, if any, in the dividend reduction as we may subsequently find fair and equitable. The plan thus does not purport to fix the remaining rights of the preferred stock as to the balance of their claims as reduced by the proposed payment. Likewise we are not here confronted with the question of whether the $6 preferred stock should receive, in the ultimate settlement of the preferred stock's claims, a larger participation than the $5 preferred stock, as proposed in Plan II. These rights are proposed to be finally settled in connection with Plan II. In effect we are asked to consider at this time only the fairness of the $30 payment coupled with a 30 per cent reduction in the $5 and $6 dividend rates and to reserve our final conclusions as to the ultimate rights of the $5 and $6 preferred stocks until our consideration of Plan II.

We recognize the desirability of a plan which would satisfy the rights of both classes of preferred stockholders in one transaction. However, we must recognize that on the one hand Bond and Share has cash and tem-

[10] Re The United Light & P. Co. (1943) Holding Company Act Release No. 4215, 49 PUR(NS) 8, plan approved and enforced (1943) 51 PUR(NS) 235, 51 F Supp 217; affirmed sub nom. Otis & Co. v. Securities and Exchange Commission (1945) 323 US 624, 89 L ed —, 57 PUR(NS) 65, 65 S Ct 483.

porary cash investments sufficient to make the proposed pro-rata payment immediately, its income therefrom is negligible, and its preferred dividend requirements are substantially in excess of its corporate net income and that, on the other hand, the preparation of a record with respect to the securities to be distributed in satisfaction of the remainder of the rights of the preferred stockholders will entail a substantial amount of time during which the company should not be required to hold its cash idle with all the costs attendant thereon. We believe it appropriate and fair that such funds should be permitted to be used immediately as proposed rather than held idle pending formulation and approval of a complete § 11 plan requiring extended hearings and consideration.

Under all the circumstances, we believe that the steps proposed in Plan I constitute a reasonable method of effectuating such partial distribution. We will reserve jurisdiction and rely upon our powers under the act to assure that the preferred stockholders receive fair and equitable treatment as to the balance of their claims.

In the light of these considerations, we find Plan I to be fair and equitable to the security holders affected thereby.

Conclusion

Having found Plan I to be necessary to effectuate § 11(b) and fair and equitable to the persons affected thereby, we shall approve it. Jurisdiction will be reserved over the fees and expenses to be paid in connection with the plan and over all matters in these consolidated proceedings not specifically determined in this opinion.

Bond and Share has requested pursuant to the provisions of § 11(e) that, if we approve Plan I, we make application to an appropriate district court of the United States for its approval and enforcement of the plan. Our order will so provide.

Bond and Share has requested, for purposes of § 1808 of the Internal Revenue Code, 26 USCA § 1808 and Supplement R thereof, that our order herein recite that the transactions proposed by Plan I are necessary or appropriate to the integration or simplification of the holding company system of which Bond and Share is a member and necessary or appropriate to effectuate the provisions of § 11(b) of the act. In light of our findings here, we will grant this request.

An appropriate order will issue.

ELECTRIC BOND AND SHARE COMPANY

Consolidated Capitalizations As Adjusted of Subholding Company Systems and Portion of Such Securities Held by Bond and Share

As at December 31, 1944

Adjusted Consolidated Capitalization of Subholding Company Systems:	American Amount	%	American Gas Amount	%	Electric Amount	%	Foreign Power Amount	%	National Amount	%
Securities of Subsidiary Companies Held by Others Than Subholding Company:										
Debt	$297,193,790	40.97	$206,483,500	46.40	$214,324,077	44.73	$43,591,986[4]	6.87	$185,974,750	47.60
Preferred Stock	89,056,200	12.28	72,732,500[1]	16.34	35,834,800	7.48	36,327,815	5.72	81,556,809	20.87
Cumulative dividend arrears on preferred stock of subsidiaries	3,859,627	.53	..	..	..	..	15,187,381	2.39	11,447	.01
Common stock plus applicable surplus less adjustment to reflect preferred arrears	312,185	.04	..	..	8,642,247	1.80	11,143,822	1.76	3.364	.00
Subtotal	$390,421,802	53.82	$279,216,000	62.74	$258,801,124	54.01	$106,251,004	16.74	$267,546,370	68.48
Securities of Subholding Company:										
Debt	$36,389,600	5.02	$25,350,000	5.70	$29,178,000	6.09	$80,000,000	12.60	$ ..	..
Preferred Stock	177,145,326	24.42	35,562,300	7.99	84,635,267[2]	17.66	343,590,665[2]	54.13	..	..
Cumulative dividend arrears on preferred stock	60,455,507	8.33	..		67,316,761	14.05	316,074,515	49.79	..	..
Common stock plus surplus less adjustment to reflect preferred arrears	61,054,488	8.41	104,904,339	23.57	39,256,227[3]	8.19	(211,125,949)[3]	(33.26)	123,156,163	31.52
Subtotal	$335,044,921	46.18	$165,816,639	37.26	$220,386,255	45.99	$528,539,231	83.26	$123,156,163	31.52
Total Adjusted Consolidated Capitalization of Subholding Company System	$725,466,723	100.00	$445,032,639	100.00	$479,187,379	100.00	$634,790,235	100.00	$390,702,533	100.00
Outstanding Securities of Subholding Company Systems Held by Bond & Share at Adjusted Book Value as Above:										
Securities of Subsidiary Companies:										
Debt	$4,913,000	.68	$ ..	..	$ ..	..	$19,500,000	3.07	$ ..	..
Preferred Stock	..	..	..	..	..	..	..	..	..	..
Cumulative dividend arrears on preferred stock	..	..	..	..	..	..	..	..	..	..
Common stock plus applicable surplus less adjustment for preferred arrears	..	..	..	..	..	..	..	..	..	..
Subtotal	$4,913,000	.68	$ ..	..	$ ..	..	$19,500,000	3.07	$ ..	..
Securities of Subholding Company:										
Debt	$ ..	..	$ ..	..	$ ..	..	$30,000,000	4.73	$ ..	..
Preferred Stock	5,184,000	.72	..	..	1,439,000	.30	223,784,510	35.25	..	..
Cumulative dividend arrears on preferred stock	1,623,240	.22	..	..	1,281,139	.27	220,456,601	34.73	..	..
Common stock plus applicable surplus less adjustment to reflect preferred arrears	19,019,887	2.62	19,821,016	4.45	22,466,744	4.69	(84,878,362)	(13.37)	57,343,359	14.68
Subtotal	$25,827,127	3.56	$19,821,016	4.45	$25,186,883	5.26	$389,362,749	61.34	$57,343,359	14.68
Total Adjusted Consolidated Capitalization of Subholding Company Systems Owned by Bond & Share	$30,740,127	4.24	$19,821,016	4.45	$25,186,883	5.26	$408,862,749	64.41	$57,343,359	14.68
Underlying Book Value adjusted as above of Securities of Subholding Company Having Voting Power	$298,655,321	41.17	$140,466,639	31.56	$177,049,706	36.95	$(211,125,949)	(33.26)	$123,156,163	31.52
Underlying Book Value adjusted as above of Securities of Subholding Company Having Voting Power Owned by Bond & Share	$25,827,127	3.56	$19,821,016	4.45	$22,555,362	4.71	$(84,878,362)	(13.37)	$57,343,359	14.68
Ratio of Adjusted Underlying Book Value of Securities of Subholding Company Having Voting Power Owned by Bond & Share to Adjusted Underlying Book Value of Securities of Subholding Company Having Voting Power	8.65%		14.11%		12.74%		40.20%		46.56%	

[1] Excludes $2,945,646 of premiums which have been included in consolidated surplus of the subholding company.
[2] Arrived at by assigning $100 per share to outstanding shares of preferred stock.
[3] Value of common stock arrived at by deducting preferred stock at $100 per share from combined capital account.
[4] Foreign currency obligations have been converted at current exchange rates. Exchange differential of $3,189,999 as at December 31, 1944, in favor of subholding company, has been included in consolidated surplus.

ELECTRIC BOND AND SHARE COMPANY

Balance Sheet June 30, 1945

Assets	Per Books	Adjustments to Reflect Plan I Transactions	After Plan I Transactions
Investment Securities and Advances (Ledger Value)			
Notes and Accounts Receivable:			
American & Foreign Power Company Inc. ...	$30,000,000		$30,000,000
Ebasco Services Incorporated	100,000		100,000
Bonds:			
Cuban Electric Company 6% Debentures, due 1948	19,500,000		19,500,000
Stocks and Option Warrants:			
Ebasco Services Incorporated	1,690,000		1,690,000
System companies and miscellaneous	390,916,073		390,916,073
Total Investment Securities and Advances	$442,206,073		$442,206,073
Current Assets:			
Cash in Banks—On Demand	$20,899,517		
Temporary Cash Investments — Short-Term Securities	30,067,979	($31,298,400)	$19,669,096
Accounts Receivable	1,585,585		1,585,585
Accrued Interest Receivable:			
Associate Companies	311,438		311,438
Others	22,500		22,500
Other Current Assets	200		200
Total Current Assets	$52,887,219	($31,298,400)	$21,588,819
Deferred Charges:			
Prepayments	$1,693		$1,693
Total	$495,094,985	($31,298,400)	$463,796,585
Liabilities			
Capital Stock:			
$5 Preferred, no par value, cumulative (entitled upon liquidation to $100 a share); pari passu with $6 Preferred; authorized 903,312 shares; issued 203,312 shares; outstanding (less 300 shares reacquired) 203,012 shares	$20,301,200	($6,090,360)	$14,210,840
$6 Preferred, no par value, cumulative (entitled upon liquidation to $100 a share); pari passu with $5 Preferred; authorized 2,184,613 shares; issued and outstanding 840,268 shares	84,026,800	(25,208,040)	58,818,760
Common, $5 par value; authorized 20,000,000 shares; outstanding 5,250,357.66 shares	26,251,788		26,251,788
Total Capital Stock	$130,579,788	($31,298,400)	$99,281,388
Current Liabilities:			
Accounts Payable:			
Associate Companies	$5,270		$5,270
Others	280,656		280,656
Dividends Declared	1,514,167		1,514,167
Accrued Taxes	1,233,650		1,233,650
Total Current Liabilities	$3,033,743		$3,033,743

( ) Indicate decrease.

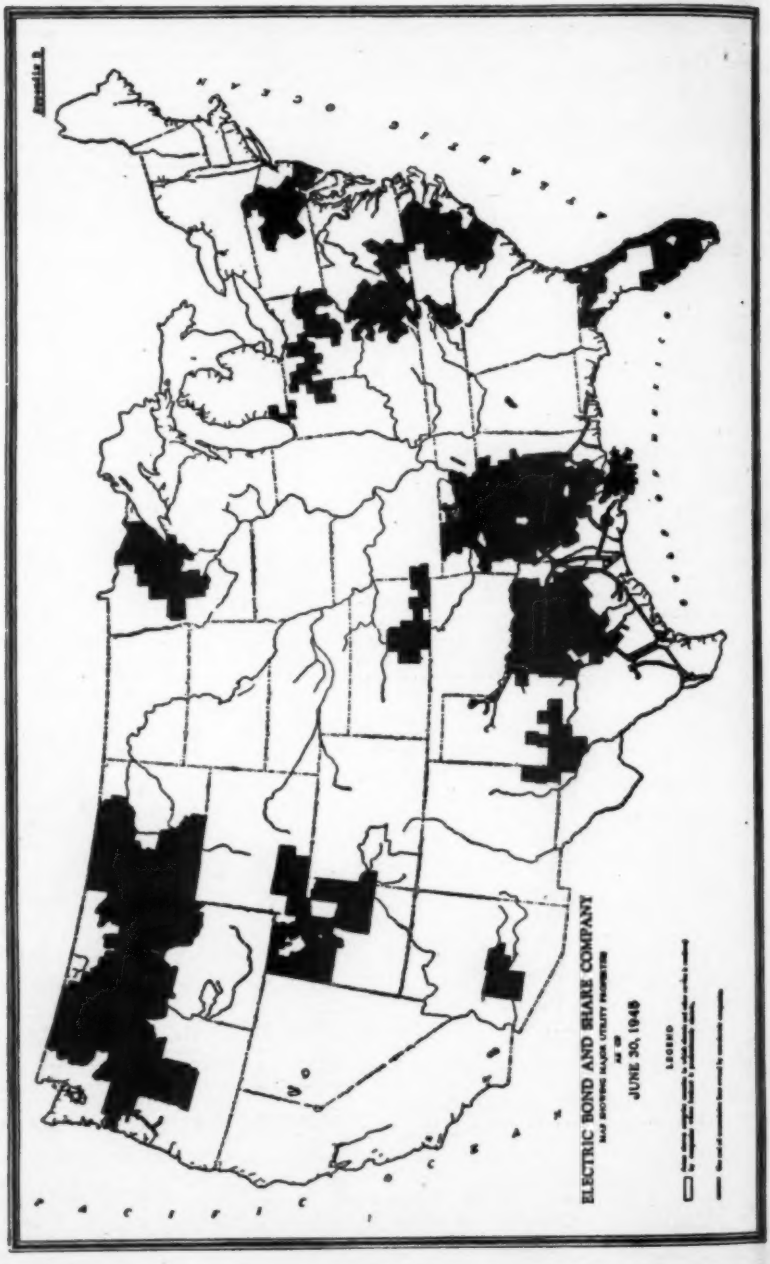
Reserves (Appropriated from Capital Surplus)	$4,893,982		$4,893,982
Deferred Credits	$195		$195
Surplus:			
Capital Surplus	$323,201,426		$323,201,426
Earned Surplus	33,385,851		33,385,851
Total Surplus	$356,587,277		$356,587,277
Total	$495,094,985	($31,298,400)	$463,796,585

() Indicate decrease.

APPENDIX C

ELECTRIC BOND AND SHARE COMPANY
Statement of Income
Twelve Months Ended June 30, 1945

	Per Books	Adjusted to Reflect Investments Owned June 30, 1945	Pro forma Based on Investments Owned June 30, 1945 after Plan I Transactions
Gross Income:			
Interest:			
United Gas Corporation	$1,257,700	$	$ .....
American & Foreign Power Company Inc.	912,500	912,500	912,500
Cuban Electric Company	877,500	877,500	877,500
Texas Power & Light Company	232,221	.....	.....
Other System Companies	34,222	.....	.....
Total Interest	$3,314,143	$1,790,000	$1,790,000
Dividends:			
American Gas and Electric Company	$1,524,573	$1,524,573	$1,524,573
American & Foreign Power Company Inc.	491,454	491,454	491,454
United Gas Corporation	121,170	.....	.....
Ebasco Services Incorporated	34,000	34,000	34,000
Total Dividends	$2,171,197	$2,050,027	$2,050,027
Other Income	$187,846	$264,250	.....
Total	$5,673,186	$4,104,277	$3,840,027
Expenses:			
Federal income taxes	$1,110,753	$520,000	$414,440
Other taxes	170,781	170,781	170,781
Other Expenses	821,498	821,498	821,498
Total Expenses	$2,103,032	$1,512,279	$1,406,719
Net Income Balance (to earned surplus)	$3,570,154	$2,591,998	$2,433,308
Preferred Stock Dividends, whether declared or undeclared	$6,204,521	$6,056,668	$4,239,668


ELECTRIC BOND AND SHARE COMPANY
JUNE 30, 1948
LEGEND
P a c i f i c

ORDER

Electric Bond and Share Company ("Bond and Share"), a registered holding company, having filed with the Commission pursuant to § 11(e) of the Public Utility Holding Company Act of 1935 an application for approval of a plan designated as "Plan I," said plan proposing a cash payment of $30 per share on the outstanding $5 and $6 preferred stocks of the company to be accompanied by a modification of the rights of the holders of such preferred stocks, including a reduction of $30 per share in the amounts which such holders shall be entitled to receive in the event of liquidation, redemption, or capital distribution and including a reduction of 30 per cent in the annual dividend rates, such reduction in dividend rates to be subject, however, to any adjustment which, subsequent to Commission and court approval of Plan I, may be found by the Commission to be fair and equitable and may be approved by the Commission and such court; and

Bond and Share having requested the Commission, pursuant to § 11(e) of the act, if it approves Plan I, to apply to a court in accordance with the provisions of sub-section (f) of § 18 of the act to enforce and carry out the terms and provisions of said Plan I; and

The Commission having issued its notice and order for hearing on said application and on Plan I under § 11 (e) and having directed the consolidation of the proceedings thereon with proceedings directed to Bond and Share under §§ 11(b)(1) and 11(b)(2) of the act; and

Copies of said notice and order for hearing and copies of the plans having been mailed to all security holders of Bond and Share (in so far as the identity of such security holders was known or available), notice having been duly given to all interested persons, a public hearing having been held at which hearing security holders of Bond and Share and other interested persons were afforded an opportunity to be heard; and

Bond and Share having requested that the order of the Commission conform to the requirements of § 1808 (f) and Supplement R of the Internal Revenue Code, as amended, and contain the findings therein specified; and

The Commission having considered the record and having made and entered its findings and opinion herein:

It is *ordered* that, pursuant to the applicable provisions of the act and the Rules and Regulations thereunder, Plan I be, and the same hereby is, approved, subject to a reservation of jurisdiction with respect to all questions presented in our consolidated proceedings not herein decided and with respect to all legal fees and expenses to be paid in connection with said Plan I.

It is *further ordered* that counsel for the Commission be, and they hereby are, authorized and directed to make application forthwith on behalf of the Commission to an appropriate United States district court pursuant to the provisions of § 11(e) and in accordance with subsection (f) of § 18 of the act to enforce and carry out the terms and provisions of the said Plan I.

It is *further ordered* that this order shall not be operative to authorize the consummation of any transactions proposed in Plan I until an appropriate

United States District Court shall, upon application of the Commission, enter an order enforcing the said Plan I.

It is *further ordered* that the transactions proposed in Plan I, including, without limitation, the said cash payment of $30 per share on the outstanding $5 and $6 preferred stocks of Bond and Share, and the stamping of the preferred stock certificates with a appropriate legend evidencing th modification of the rights of the sai preferred stocks, are necessary and ap propriate to the integration and sim plification of the Bond and Shar holding company system and to ef fectuate the provisions of § 11 (b) o the Public Utility Holding Company Act of 1935.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

Massachusetts Mutual Life Insurance Company

v.

Securities and Exchange Commission et al.

No. 13099
151 F2d 424
October 30, 1945

APPEAL *from order of District Court approving plan under § 11(e) of Holding Company Act for retirement of bonds of subsidiary of holding company without payment of premiums; affirmed. For decision of lower court, see (1944) 58 PUR(NS) 414, 57 F Supp 997.*

Security issues, § 15.1 — Powers of Securities and Exchange Commission — Premium on bond retirement — Subsidiary operating company.

1. The retirement of bonds issued by an operating subsidiary of a holding company, with or without premium redemption provision, is within the power of the Securities and Exchange Commission in a reorganization proceeding under § 11(b) of the Holding Company Act, 15 USCA § 79k(b), p. 313.

Security issues, § 5.1 — Bond retirement — Involuntary action — Premium — Holding Company Act.

2. Retirement of bonds of a subsidiary of a holding company is not due to any voluntary act on the part of the subsidiary within the meaning of a mortgage provision for redemption premium, but is due to the compulsion of the Holding Company Act, where such retirement is necessary as the result of an order of the Securities and Exchange Commission requir-

ing recapitalization and reduction of indebtedness in order to comply with the provisions of § 11(b)(2) of the act, 15 USCA § 79k(b)(2), p. 315.

Intercorporate relations, § 19.3 — Simplification of holding company system — Necessary plan.

3. The provision of § 11(e) of the Holding Company Act, 15 USCA § 79k(e), that before approving a plan for reorganization of a holding company or of any of its subsidiaries the Commission must find that such plan is necessary to effectuate the provisions of subsection (b) is not applicable to the details of the plan, p. 315.

Security issues, § 5.1 — Nonpayment of premium — Plan under Holding Company Act — Fair and equitable.

4. Retirement of bonds of a subsidiary of a holding company without paying redemption premiums, under compulsion of the Holding Company Act and orders of the Commission thereunder, is not repugnant to the statutory requirement that a reorganization plan must be fair and equitable to the persons affected by such plan, where the bondholders receive from that which is available for the satisfaction of their claims the equitable equivalent of the rights surrendered, p. 315.

Security issues, § 5.1 — Retirement of bonds —— Fairness of plan under Holding Company Act — Call premium.

5. Call premiums provided for in a mortgage indenture in case of voluntary retirement of bonds are neither a factor in nor a measure of a fair amount to be paid bondholders on retirement of their bonds under the compulsion of the Holding Company Act, p. 315.

Appeal and review, § 28.9 — Conclusiveness of findings — Securities and Exchange Commission — Reorganization plan — Bond retirement.

6. The proper measure of the equitable equivalent of bondholders' rights upon retirement of outstanding bonds, in a reorganization of an operating utility subsidiary under the Holding Company Act, is for the determination of the Securities and Exchange Commission in the first instance, and its expert skill in appraising the facts must be accorded due weight by the court; and when there is a rational basis in fact for the finding of the Commission and no clear-cut error of law, the court is not inclined to disturb the conclusions, p. 316.

Corporations, § 22 — Reorganization — Compensation to bondholders — Contract provision.

7. The due date fixed in the contract is not the basis for a claim for interest payments when retirement of bonds, in a reorganization under the Holding Company Act, is compelled by an act of Congress in the furtherance of a legitimate public policy, since contract provisions standing in the way of the consummation of that policy must yield to the public good and are illegal, p. 316.

Corporations, § 10 — Powers of Commission — Reorganization — Holding company subsidiary.

8. The Securities and Exchange Commission has power to require a change in the corporate structure of an operating subsidiary of a holding company by retirement of bonds, notwithstanding the provision of § 11(b)(2) of the Holding Company Act, 15 USCA § 79k(b)(2), limiting Commission power, with respect to operating companies, to the purpose of fairly and equitably distributing voting power among security holders, p. 317.

Corporations, § 22 — Reorganization — Fairness of plan — Bond redemption without premium.

9. The reference in § 11(b)(2) of the Holding Company Act, 15 USCA § 79k(b)(2), to the distribution of voting power among security holders of a company which is not a holding company states a condition precedent only to the power of the Commission to order a change in the corporate structure of such a company, and it is not relevant to the question of the fairness or equity of retiring bonds without paying the redemption premiums provided for in the mortgage securing them, p. 317.

Security issues, § 5.1 — Bond retirement — Nonpayment of premiums — Plan under Holding Company Act.

10. Redemption premiums are not required by § 26(c) of the Holding Company Act, 15 USCA § 79z(c), to be paid when retirement of bonds of an operating subsidiary is compelled under the Holding Company Act although call premiums are provided for in the mortgage securing the bond issue, since contract provisions contrary to a new concept of public policy not foreseeable when the contract was made become illegal and cannot be enforced, p. 318.

Appeal and review, § 62 — Findings by appellate court.

11. An order of the district court approving a plan under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), was not defective for failure of the court to consider the case and to make independent findings of fact and conclusions of law, p. 318.

Security issues, § 3 — Constitutional requirements — Bond redemption without premium payment — Holding Company Act.

12. Retirement of bonds of an operating subsidiary of a holding company under compulsion of the Holding Company Act without the payment of redemption premiums provided in a mortgage prior to enactment of that act does not violate the Fifth Amendment to the Constitution of the United States, p. 318.

APPEARANCES: John F. Handy, of Springfield, Mass., and Roscoe Anderson, W. R. Gilbert, and Anderson, Gilbert, Wolfort, Allen & Bierman, all of St. Louis, Mo., for appellant; Thompson, Mitchell, Thompson & Young and Henry J. Kaltenbach, Jr., all of St. Louis, Mo., for appellee Laclede Gas Light Co.; Roger S. Foster, Solicitor, David K. Kadane, Sp. Counsel, Public Utilities Division and Alfred Hill, Attorney, Securities and Exchange Commission, all of Philadelphia, Pa., for appellee Securities and Exchange Commission.

Before Gardner, Sanborn, and Thomas, CJ.

THOMAS, CJ.: This is an appeal by Massachusetts Mutual Life Insurance Company, a creditor of the Laclede Gas Light Company, from an order of the district court entered on December 4, 1944 (Re Laclede Gas Light Co. 58 PUR(NS) 414, 57 F Supp 997), in proceedings for the approval and enforcement of a plan for corporate reorganization previously approved by the Securities and Exchange Commission. The plan was evolved in proceedings under § 11(e)

of the Public Utility Holding Company Act of 1935, 49 Stat 803, 15 USCA § 79a et seq., § 79k(e). The question presented is whether callable bonds, not due, of a public utility corporation, not a holding company, in reorganization under the act may be retired without paying the redemption premiums.

The reorganization of three corporations is involved in the proceedings: The Ogden Corporation, a registered holding company, organized under the laws of Delaware; Laclede Gas Light Company, organized under the laws of Missouri and engaged in manufacturing and distributing gas and its residuals in the city of St. Louis; and Laclede Power & Light Company, a Missouri corporation, engaged in generating, transmitting, and selling electric energy in the city of St. Louis. The latter two corporations are subsidiaries of the former. Following the example of the Commission and of counsel in their briefs we shall refer to the corporations as Ogden, Laclede Gas, and Laclede Electric, respectively.

On December 31, 1943, Laclede Gas had outstanding two bond issues. The first issue of 1904 consisted of $18,961,105 of 5 per cent gold bonds due April 1, 1934, and extended at various times to April 1, 1945. The second issue in 1919 of 5½ per cent gold bonds consisted of two series: Series C, due February 1, 1953, in the amount of $17,500,000 and series D, due February 1, 1960, in the amount of $5,500,000. Both issues were secured by liens upon the property of the corporation, and $10,000,000 of the 1904 issue were pledged as additional security for the 1919 issue. The company's aggregate outstanding bonded indebtedness was, therefore, $31,961,105, in addition to which it had outstanding $2,000,000 of 6 per cent collateral trust notes due August 1, 1942, and extended to August 1, 1945. At the same time it had outstanding $2,333,000 of 6 per cent preferred stock of the par value of $100 per share and $10,700,000 of common stock of the par value of $100 per share. There had been no dividends paid on any of the stock since 1933, and the arrears on the preferred stock amounted to $1,185,942, or $50.83 per share. In its statement of assets the company's property account was inflated out of proportion to costs and earnings.

On December 31, 1943, Ogden owned 73.51 per cent of Laclede Gas' voting securities, the $2,000,000 collateral trust 6 per cent notes outstanding, and $200 of the 1919 bonds. Ogden also owned 99.26 per cent of the outstanding shares of Laclede Electric, its 6 per cent demand notes for $705,000 and its open account debt of $200,000.

Another element necessary to be considered in reorganizing the corporations was the fact that Laclede Gas owned a very substantial amount of electrical equipment which it had leased to Laclede Electric in 1926 for a term expiring in 1953, and the trustee for the 1919 bond issue claimed, and Laclede Electric denied, that the lien of the mortgage securing these bonds attached not only to the rented property but also to the betterments and additions made thereto by the lessee.

The plan of reorganization assailed by appellant originated in a consolidated proceeding involving Ogden

and its numerous subsidiaries, the purpose of which was to effect compliance with the provisions of § 11(b) of the act. In that proceeding the Commission, on May 20, 1943, 50 PUR(NS) 398, entered an order requiring Ogden to take necessary action to eliminate itself as a public utility holding company, but not to divest itself of securities in Laclede Gas prior to the recapitalization of that company to the extent necessary to comply with § 11(b) (2) of the act. The order further provided that Laclede Gas should recapitalize in such a way as to include a substantial reduction of its indebtedness, the elimination of its preferred stock arrears, the conversion of its outstanding preferred and common stock into a single class of stock, and to take such steps as would be necessary to distribute voting power fairly and equitably among its security holders. This order was not appealed from and has become final.

Pursuant to the order of May 20, 1943, *supra*, Ogden, Laclede Gas, Laclede Electric and another of Ogden's subsidiaries filed applications for the approval of a plan which resulted, after the acceptance of amendments required by the Commission, in the plan approved by the court and now under consideration. This plan provided, in so far as material, that the following steps in reorganization of the corporations be taken:

1. The sale of the electric properties operated by Laclede Electric at a base price of $8,600,000, including the properties leased from Laclede Gas for which the latter corporation was to receive $2,200,000 of the sale price; and Laclede Electric was to be dissolved.

2. The recapitalization of Laclede Gas (a) by the retirement of its outstanding 1904 and 1919 bonds at principal amount and accrued interest but without redemption premiums; (b) the sale of $19,000,000 of new mortgage bonds and of $3,000,000 of serial debentures; (c) the issue of new common stock to the preferred and common stockholders in proportions determined by the Commission, 2,000,000 shares of which were to be issued to Ogden in return for (1) cancellation of the $2,000,000 collateral trust notes held by it, (2) payment to Laclede Gas of $905,000 in cash, and (3) payment to Laclede Gas of Laclede Electric's share of the cash proceeds of the sale of the electric properties estimated to be $6,175,000.

3. By the foregoing acts of Ogden and the sale of all its holdings of common stock in the Laclede Gas to the public, Ogden, as one of the steps necessary to eliminate it as a holding company, was to divest itself of all interest in Laclede Gas.

The result of the plan was to reduce Laclede Gas' indebtedness to $22,000,000 and to distribute the voting power entirely to its one class of stockholders. The Commission estimated that under the plan the future earnings of Laclede Gas would enable it to pay an annual dividend of 37 to 41.1 cents per share on its stock.

The appellant is a holder of the 1919 bonds. The appeal is from that part of the order of December 4, 1944, reading: ". . . the Amended Plan, providing that the 1919 bonds shall be fully satisfied and discharged without the payment to holders thereof of the premiums payable under the terms of the mortgage securing said bonds in

the event of a redemption of the same, is approved as fair and equitable and appropriate to effectuate the provisions of § 11 of the act."

The mortgage securing the 1919 bonds provides that such bonds "may be redeemed by the company at any time at par and accrued interest and such premium, if any, as the board of directors may determine at the time of the issuance of said bonds. If the company shall elect to redeem any of the bonds hereunder it shall notify the trustee . . . ." Under this provision the redemption premium if payable in 1944 would aggregate $570,000.

The appellant does not challenge the findings of fact made by the Commission and approved by the court. All the objections urged relate to the authority of the Commission under the act to order the retirement of the 1919 bonds of Laclede Gas without paying the redemption premiums provided for in the mortgage securing them.

The substantial questions presented by the appeal are: 1. Is the retirement of the 1919 bonds under the plan due to a voluntary act of Laclede Gas and accordingly controlled by the call provision of the mortgage securing such bonds, or, on the other hand, is their retirement under the circumstances compelled by § 11 of the act? 2. Is the retirement of the 1919 bonds without paying the redemption premiums necessary to effectuate the provisions of § 11(b) (2) of the act? 3. Is the plan fair and equitable to the persons affected thereby? And 4. Does the plan impair the contractual rights of the bondholders in violation of § 26(c) of the act, 15 USCA § 79z(c)?

The appellant contends that since Laclede Gas joined in the application for approval of the plan filed to comply with the order of May 20, 1943, 50 PUR(NS) 398, the retirement of the 1919 bonds is the result of its voluntary act. The Commission found that the retirement of the bonds occurs because of the compulsion of § 11(b) of the act[1] and that consequently the redemption premium clause of the mortgage is not applicable.

[1] It is conceded, as it must be,

[1] Section 11(b) "It shall be the duty of the Commission, as soon as practicable after January 1, 1938: . . .

"(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. . . . Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company. . . .

"(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of

that the retirement of the bonds issued by a holding company, with or without premium redemption provision, is within the power of the Commission in a reorganization proceeding under § 11(b) of the act. New York Trust Co. v. Securities and Exchange Commission (1942) 46 PUR(NS) 270, 131 F2d 274, certiorari denied (1943) 318 US 786, 87 L ed 1153, 63 S Ct 981, rehearing denied (1943) 319 US 781, 87 L ed 1725, 63 S Ct 1155; City National Bank & Trust Co. v. Securities and Exchange Commission (1943) 48 PUR(NS) 195, 134 F2d 65; in Re Standard Gas & E. Co. (1945) 61 PUR(NS) 175, 151 F2d 326. Compare Otis & Co. v. Securities and Exchange Commission, 323 US 624, 637, 89 L ed —, 57 PUR (NS) 65, 65 S Ct 483. We think the reasoning in these cases is applicable to Laclede Gas, an operating utility and not a holding company.

The Commission found that compulsory retirement under the act is due to two applicable requirements of § 11, namely (1) the necessity under § 11(b) (2) that Laclede Gas reduce its indebtedness and (2) the necessity under § 11(b) that Ogden divest itself of its entire interest in the gas and electric properties of Laclede Gas and Laclede Electric.

The findings that the indebtedness of Laclede Gas is excessive, and that the distribution of voting power among its security holders is inequitable are not controverted. The first of these conditions is obviously the cause of the second. It follows, suggests the Commission, that a substantial reduction in the indebtedness of Laclede Gas is necessary to comply with the standards of § 11(b) (2), whether the reduction be accomplished by distributing new voting stock to the 1919 bondholders or by application of cash proceeds of the sale of new stock.

There is a further reason, also, why the retirement of the 1919 bonds is necessary to enable Laclede Gas to reduce its indebtedness in conformity with § 11(b) (2). In order to obtain cash to make the required debt reduction it is necessary to sell the electric properties owned by Laclede Gas and leased to Laclede Electric. A prompt sale of these properties is not feasible without retiring the 1919 bonds at the same time because of the dispute between Laclede Electric and the trustee under the 1919 bonds as to the extent of the bondholders' lien on the electric properties. Because of this same dispute the retirement of the bonds is necessary to enable Ogden to comply with the order to divest itself of its interests in Laclede Gas and Laclede Electric. While that dispute continues Ogden's holdings in the two corporations are not salable.

subsection (f) of § 18 (15 USCA § 79r), to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of § 11, the court as a court of equity may [enforce the order].

"(f) . . . In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization."

[2] Since the reduction of Laclede Gas' indebtedness was the direct result of the order of the Commission of May 20, 1943, 50 PUR(NS) 398, from which no appeal was taken, and of necessity in order to comply with the provisions of § 11(b) (2) of the act, we are of the opinion that the retirement of the 1919 bonds was not due to any voluntary act on the part of the Laclede Gas but was due to the compulsion of the act. Submission to a judgment or order of the court or to the requirements of a statute is not a voluntary action in a legal sense. Compare Dakota County v. Glidden (1885) 113 US 222, 224, 28 L ed 981, 5 S Ct 428; Chicago Great Western R. Co. v. Beecher (1945) 150 F2d 394. In a moral or patriotic sense obedience to law may often be regarded as voluntary; but in a legal sense, unless otherwise provided by statute, there is no choice. Submission is coercive. American Book Co. v. Kansas ex rel. Nichols (1904) 193 US 49, 48 L ed 613, 24 S Ct 394.

[3] Section 11(e) provides that before approving a plan for the reorganization of a registered holding company or of any of its subsidiaries the Commission must find that such plan is "necessary to effectuate the provisions of subsection (b)." The appellant asserts that the retirement of the 1919 bonds without the payment of the redemption premiums is not necessary within the meaning of the statute for the reason that the facts show that after the consummation of the plan Laclede Gas has sufficient funds to make such payments. Clearly the argument misconstrues the standard of necessity required by subsection (b). This subsection provides only that the Commission must find the plan "necessary" to effectuate a fair and equitable distribution of voting power among the security holders. The clause relied upon is not applicable to the details of the plan. The only basis for the contention that the act requires that the plan should provide for the payment of the redemption premiums must be found, if it exists, in the provisions of the statute discussed in the following paragraphs.

[4, 5] We pass to the important question whether the retirement of the 1919 bonds without paying the redemption premiums is repugnant to the statutory requirement that the plan must be "fair and equitable to the persons affected by such plan." Section 11(e).

In Group of Institutional Investors v. Chicago, M. St. P. & P. R. Co. (1943) 318 US 523, 87 L ed 959, 63 S Ct 727, 755, the Supreme Court was called upon to construe the words "fair and equitable", as used in § 77 of the Bankruptcy Act, 11 USCA § 205 sub. e, and applied to the reorganization of a railroad company. Mr. Justice Roberts in a dissenting opinion, 318 US at p 577, said: "Substantial equivalence satisfies the requirement of 'fairness and equity' in its legal sense as used in this setting." The majority opinion stated the rule in its application to bondholders as follows: "It is sufficient that each security holder in the order of his priority receives from that which is available for the satisfaction of his claim the equitable equivalent of the rights surrendered." (318 US at p. 565.)

The Commission applied this rule in the present case, finding that "payment

of principal amount and accrued interest to the effective date of the plan . . . is the fair equivalent of the rights of the 1919 bondholders and that, therefore, such payment would be fair and equitable." In arriving at this conclusion the Commission considered that the mortgage clause providing for redemption payments is not applicable. The call premiums are, therefore, neither a factor in nor a measure of a fair amount to be paid the bondholders on retirement of their bonds. In applying the rule of equitable equivalence the Commission observed that owing to the excessive indebtedness of Laclede Gas and the imminent maturity of its first mortgage bonds there is serious danger of default on those bonds and of bankruptcy. These dangers and their consequences are averted only because of the reorganization provisions of § 11 of the act. Further, the 1919 bonds are speculative in character. On the sale of these bonds the company received only 91.45 per cent of the principal amount of the series C bonds and 95 per cent of the series D. In 1931 series C sold as low as 62 and series D as low as 65, and in 1940 both series sold as low as 38.

[6] Obviously, whether, upon retirement of outstanding bonds in the reorganization of an operating utility subsidiary, payment of principal, accrued interest, *and* redemption premiums is the equitable equivalent of the bondholders' rights depends upon the facts of each particular case. The proper measure of such equivalence is for the determination of the Commission in the first instance, and its expert skill in appraising the facts to be considered must be accorded due weight by the court.

Since there is a "rational basis" in fact for the finding of the Commission and no "clear-cut" error of law by either Commission or court, we are not inclined to disturb the conclusion that retirement of the bonds at principal and accrued interest amounts to the "equitable equivalent of the rights surrendered."

Appellant contends further that the plan is inequitable in that the Commission has not fairly subordinated the rights and interests of the stockholders and junior creditors to the superior rights of the bondholders. In support of this contention it is insisted that fair and equitable treatment under the plan as compared with the treatment of Ogden, owner of most of the Laclede Gas and Laclede Electric stock and a junior creditor of both corporations, would entitle the holders of the 1919 bonds to interest on their bonds until their maturity date or to reasonable compensation for reinvestment expenses.

[7] We agree that under proper circumstances a bondholder whose bonds are redeemed before their due date should be allowed compensation for the unanticipated expense incident to the reinvestment of his funds. The due date fixed in the contract in this case cannot be urged, however, as the basis for a claim for interest payments. When the retirement of bonds is compelled by an act of Congress in the furtherance of a legitimate public policy, contract provisions standing in the way of the consummation of that policy must yield to the public good and are illegal. See authorities cited

the discussion of the effect of § 26 c) below.

Comparing the sacrifices of the ondholders in this instance with the acrifices of Ogden there appears to e no basis for the charge of unfair- ess. Ogden owned 22.9 per cent of he preferred stock and 84.5 per cent f the common stock of Laclede Gas nd $2,000,000 of its 6 per cent col- ateral notes. Ogden also owned 99.26 er cent of the common stock of La- lede Electric and $905,000 of its in- debtedness. Upon the sale of its assets nd the dissolution of Laclede Electric Ogden was to be paid the $905,000 nd was to receive 2,000,000 shares of he new stock of Laclede Gas of the ar value of $4 a share which it is equired to sell to the public. In re- turn for this stock and to aid in the eduction of Laclede Gas' debts and to eliminate its interest in both sub- sidiaries Ogden was required to cancel he $2,000,000 of Laclede Gas' col- lateral trust notes, to turn over to it he $905,000 received from the pro- ceeds of the sale of Laclede Electric nd its share as a stockholder of the ash proceeds of Laclede Electric es- timated at $6,175,000. If we assume hat at the beginning of this proceed- ing both the common and the preferred stock, with its dividend arrears, of Laclede Gas held by Ogden had little or no value, still for the 2,000,000 shares of new stock of the aggregate par value of $8,000,000 it surrenders to Laclede Gas cash and 6 per cent collateral trust notes of the aggregate value of $9,080,000. The court found that the comparative treatment of the bondholders without payment of inter- est to the due date of the bonds, and of the stockholders and junior cred- itors under the plan is fair and equi- table, and this court cannot say that such finding is clearly erroneous. We agree with the trial court.

[8, 9] Since Laclede Gas is not a holding company and the bondholders are "security holders of such com- pany," the appellant insists that under § 11(b) (2) of the act, *supra*, the Commission is powerless to require a change in the company's corporate structure by retirement of the bonds because such change can be made for the purpose only of "fairly and equi- tably distributing voting power among the security holders." This conten- tion is urged as an additional reason why the plan is not "fair and equi- table" to the bondholders without pay- ment of the redemption premiums.

The argument must, in order to be of any rational force, assume that the holders of the 1919 bonds may, not- withstanding the retirement of the bonds, continue to be security holders after the plan is put into operation, otherwise § 11(b) (2) is not applica- ble. To hold to the contrary renders the provisions of the statute incon- sistent; and to hold that such bond- holders may continue to be security holders renders the statute absurd. The court has approved for what seems to us to be sound reasons the finding of the Commission that the reduction of the indebtedness of La- clede Gas and consequently the retire- ment of the 1919 bonds are compelled by the requirements of § 11. The court has also, pursuant to the re- quirements of § 11(e), adjudged that the plan as a whole involving the re- tirement of the bonds is "appropriate to effectuate the provisions of § 11." The term "security holders," as used

in § 11(b) (2), can apply, therefore, only to security holders continuing as such in the reorganized corporation. The provision of § 11(b) (2) in reference to the distribution of voting power among the security holders of a company, which is not a holding company, states a condition precedent only to the power of the Commission to order a change in the "corporate structure" of such a company. It is not relevant to the question of the fairness or equity of retiring bonds without paying the redemption premiums provided for in the mortgage securing them.

[10] Appellant argues that conceding arguendo that retirement was necessitated by factors over which Laclede Gas had no control, still the redemption premiums must be paid because their payment is a contractual obligation and to deny payment violates § 26(c) of the act which provides that "Nothing in this title shall be construed (1) to affect the validity of any loan or extension of credit . . . made or of any lien created prior or subsequent to the enactment of this title."

If our conclusion that the retirement of the 1919 bonds is compelled by the mandate of the statute requiring not only utility holding companies but their subsidiary utility corporations as well to be reorganized under the supervision of the Commission in such a way as fairly and equitably to distribute voting power among the security holders, then there is no merit in appellant's contention. For when the provisions of a contract are contrary to a new concept of public policy not foreseeable when the contract was made it becomes illegal and cannot be enforced. New York Trust Co. v. Securities and Exchange Commission, *supra* ([1942] 46 PUR(NS) 270, 131 F2d 274); Louisville & N. R. Co. v. Mottley (1911) 219 US 467, 55 L ed 297, 31 S Ct 265, 34 LRA(NS) 671; Holyoke Water Power Co. v. American Writing Paper Co. (1937) 300 US 324, 81 L ed 678, 57 S Ct 485. "Contracts may create rights of property, but, when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity." Norman v. Baltimore & O. R. Co. (1935) 294 US 240, 307, 308, 79 L ed 885, 55 S Ct 407, 416, 95 ALR 1352. See, also, City National Bank & Trust Co. v. Securities and Exchange Commission ([1943] 48 PUR(NS) 195, 134 F2d 65). Section 26(c) of the act is not, therefore, applicable.

[11, 12] The appellant objects to the order appealed from on the further grounds that the court failed to consider the case and to make independent findings of fact and conclusions of law, and that the retirement of the 1919 bonds without the payment of the redemption premiums violates the Fifth Amendment to the Constitution of the United States. We have considered both these contentions and find that they are without merit.

Affirmed.

FEDERAL POWER COMMISSION

Wedron Silica Company et al.

v.

Illinois Iowa Power Company et al.

Docket No. IT-5688
November 9, 1945

COMPLAINT *against electric rates; complaint dismissed without prejudice.*

Interstate commerce, § 34.1 — Scope of Federal Power Act — Electricity not for resale.

1. A sale of electricity by a power company to industrial companies for their own use and not for resale does not constitute a "sale of electric energy at wholesale" within the meaning of that term as used in the Federal Power Act, p. 320.

Interstate commerce, § 34.1 — Scope of Federal Power Act — Sale to city.

2. A sale of electric energy to a city is not a sale of electric energy in interstate commerce within the meaning of the Federal Power Act when it does not include any electric energy which is transmitted from one state and consumed at points outside thereof, p. 320.

By the COMMISSION: It appearing to the Commission that:

(a) On April 26, 1941, the corporations named as complainants in the caption hereof, filed a joint complaint against the Illinois Iowa Power Company, North Counties Hydro-Electric Company, Mississippi River Power Company and Kewanee Public Service Company, claiming that rates charged and collected by such utilities were unjust, illegal, and discriminatory and asking that the Commission institute an investigation and, after hearing, fix just, reasonable, and nondiscriminatory rates for the service provided;

(b) The complaint was duly served upon each of the defendants, and the Illinois Iowa Power Company, the Mississippi River Power Company, and the Kewanee Public Service Company appeared specially and moved to dismiss the complaint on the ground that the Commission was without jurisdiction as to any of the matters alleged in the complaint;

(c) No answer or response of any kind has been received from North Counties Hydro-Electric Company;

[1] (d) From the facts alleged in the complaint, it appears that Wedron Silica Company, Kewanee Boiler Company, Standard Silica Corporation, Carus Chemical Company, Abingdon Sanitary Manufacturing Company, and Little John Coal Company (all of the complainants except the city of Oglesby) purchase energy from the various defendants for their own use and not for resale, and consequently the sale by defendants to such complainants does not constitute a "sale of electric energy at wholesale" within the meaning of that term as used in the Federal Power Act;

[2] (e) The sale of electric energy to the complainant, city of Oglesby, Illinois, does not appear to be a sale of electric energy in interstate commerce inasmuch as it does not include any electric energy which is transmitted from one state and consumed at points outside thereof and there is, therefore, no reasonable ground for this Commission to investigate the complaint;

The Commission *orders* that:

The joint complaint filed by the corporations named as complainants in the caption hereof against Illinois Iowa Power Company, North Counties Hydro-Electric Company, Mississippi River Power Company, and Kewanee Public Service Company be and the same is hereby dismissed without prejudice.

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

International Harvester Shows New Plant to A.E.D.

FOUR hundred industrial equipment distributors, manufacturers, and editors attended an informal opening of the Melrose Park works and preview of new Industrial Power products held by International Harvester recently during the 27th annual meeting of the Associated Equipment Distributors in Chicago. The group was taken on a tour of the immense new International plant which is situated on a 125-acre tract west of Chicago and has more than 2,000,000 square feet of roofed floor space. During the inspection of the plant, future operations were explained by representatives from the company's manufacturing department. The tour ended with a display of International's present and future Industrial Power line at the administration building.

The TD-24, International's streamlined new diesel crawler tractor, was the center of interest at the display. This big new crawler tractor, weighing approximately 35,000 pounds and with 130 drawbar horsepower, will be the largest ever built by International Harvester. Other new products, for production at a later date, were a marine diesel engine, several new power units, and a new large industrial wheel tractor.

Company engineering and sales representatives were on hand to answer questions about the new power units and tractors as well as the current line, which made up the rest of the exhibit.

New Street Lighting Control

EARLY large-scale production of a new Electronic "Sun Switch," designed to control street lighting, is announced by The Ripley Company.

According to the announcement, the new unit is an answer to the utility companies' desire to render street lighting service which insures the required illumination regardless of fluctuations in weather conditions and the twilight hour.

A minimum safety factor is incorporated in all components, principal of which are standard amplifier tubes, a photo-electric cell and relay. These factors, coupled with special tungsten alloy contacts on the relay (the only moving parts), are claimed to insure the unfailing dependability and efficiency demanded of equipment used in the public service.

Under ideal conditions of daylight the control provides a minimum "lights on" period from 25 minutes after sunset to 25 minutes before sunrise and adjustment is provided to meet customers' specific requirements.

Gulf Turbine Oil Booklet

OPERATING characteristics and advantages of Gulfcrest oil for steam turbine lubrication are described in a booklet just issued by Gulf Oil Corporation. The booklet includes a picture story of the exclusive Alchlor process.

Among subjects treated are: (1) How air is actually beneficial to Gulfcrest oil under service conditions in a steam turbine, since it permits oxidation to proceed just far enough to produce additional oiliness; (2) how the Alchlor process of refining makes this lubrication highly responsive to oxidation and corrosion inhibitors.

Copies of the booklet, titled "Gulfcrest Oil for Steam Turbine Lubrication," may be obtained from local Gulf agents or from 3800 Gulf building, Pittsburgh, Pennsylvania.

I. B. M. Promotions

INTERNATIONAL BUSINESS MACHINES CORPORATION recently announced the following promotions:

James W. Birkenstock has been advanced to the position of general sales manager, with headquarters in New York. He was previously a special sales executive at the World Headquarters.

Thomas J. Watson, Jr., has been promoted to the position of assistant to the executive vice president, with headquarters in New York.

Harry J. Ritterbush, Jr., has been appointed to the position of general service manager, in charge of customer engineering systems, office service bureau, and other phases of I.B.M. service to its customers.

Changes at Swartwout Company

THE SWARTWOUT COMPANY, Cleveland, manufacturers of power plant control equipment and industrial roof ventilators, announces the appointment of Royal L. Meyer

(*Continued on page 28*)

(*Continued from page 26*)

as vice president in addition to his duties as chief engineer and assistant manager of the steam division. Mr. Meyer joined the company the first of January, 1945. E. H. Bellard, in charge of purchasing during the war years, becomes sales manager of the ventilator division.

Gas Range Contest Gains Support

WHOLEHEARTED dealer and gas company support of American Stove Company's $18,000 Magic Chef "Gas Range of Tomorrow" design contest has helped immeasurably in building up entries to an average of 400 a week, according to S. E. Little, vice president.

Typical of the many special activities conducted by gas companies and dealers was a recent dinner given by the Grand Rapids district of the Michigan Consolidated Gas Company for 21 of the city's leading architects and designers.

During the get-together all details of the contest were explained by Wallace M Chamberlain, MCG sales manager. The meeting resulted in submittal of 13 entries. Similar meetings are being planned in other cities throughout the country.

Mr. Little stated that, on the basis of returns to date, the range design contest has proved to be one of the most successful of its type ever conducted. Entries have come from all walks of life.

Brown to Complete Purchase of $500,000 in Equipment in 1946

INSTALLATION of $500,000 in new manufacturing, processing, and development equipment, started in 1945, will be completed this year, according to Henry F. Dever, president of Brown Instrument Company, Philadelphia industrial instrument division of Minneapolis-Honeywell Regulator Company.

During the past year the company acquired and installed $250,000 in new and modern machine tool equipment, constituting part of the recently announced over-all expansion plan of the entire Honeywell organization. The Philadelphia division will retain additional branch sites, acquired during war years, and will make other organizational changes for greater worker comfort and operational efficiency.

Material-handling Handbook Revision Ready

THE 56-page material-handling handbook of the Electric Industrial Truck Association has just been republished with minor changes and is now available for distribution to those interested in the problem.

The book is illustrated with photographs and graphs bearing on the economics and practical carrying through of an efficient moving and storage system for handling materials.

Anyone interested in the materials-handling problem may obtain a copy by writing to the association's headquarters, 209 S. Wells street, Chicago 4, Illinois.

H. B. Brown Returns to Neptune Meter

THE NEPTUNE METER COMPANY recently announced that Herbert B. Brown has returned to their Chicago branch from active duty as a Captain with the 23rd Tank Destroyer Group #9.

Before joining the Army in 1942, he was with the company for six years. During that time he was service manager at the Chicago office and later was promoted to sales engineer for the Chicago area.

Linemen's Protective Equipment Standard Specifications

FIVE new safety specifications for linemen's protective equipment have been completed by a committee of the American Standards Association. The project was undertaken at the request of the War Production Board but the resulting specifications are all suitable for general use in normal times.

Specifications were established for outer leather gloves to protect insulating gloves, sleeves, hose to cover sections of live wire, hoods for the glass insulators by which wire is attached to poles, and blankets to cover

(*Continued on page 30*)

(*Continued from page 28*)

electrified areas. A standard for insulating gloves had already been approved in 1942 and was endorsed by this war committee without change.

The standard includes tests for toughness and evenness of material because the slightest tingle of current leaking may cause a man to start and touch an unprotected section of wire. The safety requirements of the sleeves have been considered to be of equal importance to those of the rubber gloves. The hose, hood and blanket form a second line of defense.

In announcing the standards, the American Standards Association pointed out that the working routine and technique of each member of a line gang is still vital. It is still necessary to establish safe operating procedures so that the lineman while learning his trade will be drilled in caution.

The personnel of the committee which developed the standards was drawn from users of power and employers of linemen, manufacturers of protective equipment, insurance companies, governmental and private testing agencies, the Department of Labor, and the Union of Electrical Workers.

Program of Lighting Forums Announced by I.L.E.

WHEN the International Lighting Exposition convenes in Chicago's Stevens hotel next April 26th immediately following the spring conference of the National Electrical Wholesalers Association, one of the great purposes served will be that of focusing the nation's attention on the need for a fuller and more enlightened use of lighting in industry, business, stores, farm, home, schools, etc.

Through a series of four morning conferences, the exposition committee will seek to make better known the practical applications of the newest developments in illumination. Tickets to the conferences are available to utility personnel, architects, electrical contractors, industrial executives, illumination engineers, business men, public officials, railroad officials, and all other industrial and commercial officials concerned with lighting.

Harvester Announces Changes

INTERNATIONAL HARVESTER COMPANY has announced the following changes in branches and in branch management personnel:

Separate motor truck branches have been established at San Antonio and Houston, Texas. They will handle motor truck sales, parts, and service exclusively.

T. R. Moulder, formerly assistant manager in charge of motor trucks, has been named manager of the new San Antonio motor truck branch.

C. T. Helin has been similarly advanced from assistant manager in charge of motor trucks to manager of the new motor truck branch at Houston.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

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COMBINED CIRCULATION 8,836,981

The Beauty, Dignity and Indispensability of Trees

● Trees are something far beyond price. Human existence would be difficult without them. Fine trees, once lost, leave a great void. They should be cared for . . . by reliable experts . . . before it is too late. Davey Tree Surgeons are outdoor men who are thoroughly trained . . . who love trees . . . and appreciate their beauty, their dignity . . . and indispensability. More than seven hundred of these Davey men went to war. But now they are coming back to their profession of saving trees. Now their expert service is available to you once more.

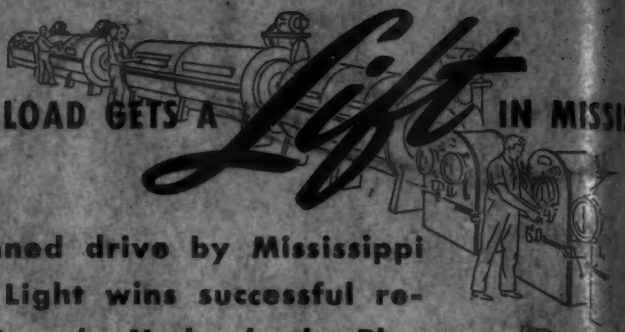
JOHN DAVEY 1849-1925 Founder of Tree Surgery

DAVEY TREE EXPERT COMPANY · KENT, OHIO
MARTIN L. DAVEY, PRESIDENT
TWO GENERATIONS OF TREE SAVING SERVICE

od Line Clearing . . . requires much more than trimming out branches: ¶ A knowledge of *how* to trim to get the greatest clearance with the least damage; ¶ A national reputation that enables the men to secure permission from adjacent property owners with a minimum of time and effort; ¶ The kind of work and conduct that virtually eliminates damage claims and law-suits; ¶ Industrious, interested, skilful men that make the cost moderate and make the rate per hour of secondary importance; ¶ And last but not least, the kind of performance that leaves the best possible public relations.

THE DAVEY TREE EXPERT COMPANY *has the reputation and the good men.*
DAVEY TREE SURGEONS *do the most satisfactory kind of line clearing work at moderate cost.*

LAUNDRY LOAD GETS A *Lift* IN MISSISSI



Well-planned drive by Mississippi Power & Light wins successful response to Laundry Modernization Plan

Laundry modernization—first in a series of *More Power to America* industrial modernization programs—has "really taken hold" in Mississippi, according to B. M. Davis, System Power Consultant of Mississippi Power and Light Company.

Successful response to this co-operative plan for more effective use of electric power grew out of sound planning, strong teamwork, and aggressive follow-through.

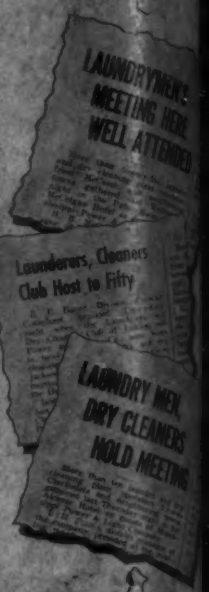
First step was preparation. M. P. & L. became a regional member of the American Institute of Laundering. Its personnel studied the industry, worked with equipment manufacturers, arranged its meetings "according to plan."

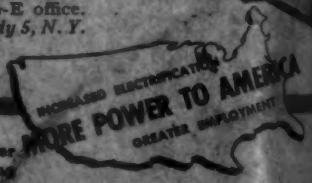
Next came the meetings with laundry and dry-cleaning operators—six in all, with an average attendance of 26. Centered around the talking slidefilm "On One Condition," the possibilities of modernization were put on a practical basis. Publicity about the meetings helped the cause along.

A follow-up program is now under way. Folders and booklets have been sent to every laundry. Power consultants are making personal calls. New information will be furnished from time to time.

Already, much good will has been gained, and inquiries concerning further use of electric power have been stimulated. Revenue-producing results are beginning to come in.

G.E. is ready with the basic ammunition that M. P. & L. employed—plans for meetings, salesmen's manuals, and the slidefilm "On One Condition," prepared in co-operation with the American Institute of Laundering. For help in putting the plan into action in your service area, consult your local G-E office. *Apparatus Dept., General Electric Company, Schenectady 5, N. Y.*





This co-operative long-range plan to accelerate further electrification of industry and farming is now moving forward on three fronts:

1. Dozens of utilities are furthering their programs of power sales training and field promotion with the visual aids now available on laundries, electronic heating, and industrial electronics.

2. Machinery manufacturers and power users are co-operating with G.E. in preparing additional motion pictures and handbooks to help your sales engineers promote electrification more effectively.

3. General Electric is exploring new fields for co-operative effort, making plans to publicize the ultimate benefits of further electrification—more productive employment, and more people regularly employed.

If you want more information on "More Power to America," call your local G-E representative.

GENERAL ELECTRIC

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